

(14,470.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 378.

F. N. DELAND, APPELLANT,

vs.

THE COUNTY OF PLATTE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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1 In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

Be it remembered that upon the 10th day of October, A. D. 1889, there was filed in the office of the clerk of the above court a petition; which petition is in words and figures as follows, to wit:

In the Circuit Court of the United States, St. Joseph Division of the Western District of Missouri, November Term, A. D. 1889.

F. M. DELAND, Plaintiff,
vs.
THE COUNTY OF PLATTE, Defendant. } Assumpsit. Damages, $20,000.00.

Petition.

The plaintiff in this suit, F. M. Deland, a resident and citizen of the State of Massachusetts, by Sanders and Bowers, his attorneys, complains of the county of Platte, a municipal corporation organized and existing under and by virtue of the laws of the State of Missouri and a resident and citizen of the St. Joseph division of the western judicial district thereof, on a plea of trespass on the case on premises, for that whereas the said defendant heretofore, to wit, on the 4th day of October, A. D. 1870, by T. H. Talbott, its then presiding justice, and T. W. Park, its then clerk, made, executed, and delivered on behalf of the taxable inhabitants of that portion of Greene township, in said county, lying and being east of the range line between 34 and 35 its fifty certain bonds, each for the sum of one thousand dollars and numbered from one to fifty, both numbers inclusive, in each of which said bonds it acknowledges itself
2 to owe and promises to pay bearer the sum of one thousand dollars on the first day of October, 1890, for value received, at the American Exchange National bank, in the city of New York, with interest at the rate of ten per cent. per annum, payable semi-annually, on the first days of April and October, each year, on presentation at the said bank of the proper interest coupon thereto attached, said bonds being issued in pursuance of an election held at Camden Point, in said county, on the 17th day of August, A. D. 1869, at which election the required number of voters voting at said election were in favor of issuing said bonds; the special tax for the same and the interest thereon to be levied and collected in the same manner as State and county taxes are levied and collected; the tax to be levied on the real estate lying within the district voting at said election. Said bonds are exact copies of each other, except as to the number printed thereon, and are in the words and figures following, to wit:

$1,000. UNITED STATES OF AMERICA. $1,000.

STATE OF MISSOURI,
County of Platte.

Platte County Twenty-year Bond.

No. —.

Know all men by these presents, that the County of Platte in the State of Missouri, acknowledges itself to owe and to be indebted to and promises to pay to bearer the sum of one thousand dollars on the first day of October, one thousand, eight hundred and ninety, for value received, at the American Exchange National bank, in the city and State of New York, with interest thereon from the first day of October, A. D. 1870, at the rate of ten per cent. per annum until paid, which interest shall be due and payable semi-annually on the first days of April and October each year, on the presentation of the proper interest coupon as annexed hereto at the
3 said American Exchange National bank.

This is one of fifty bonds of like date, amount and effect, numbered from one to fifty, both numbers inclusive, issued in pursuance of an election by the taxable inhabitants of Camden Point on the 17th day of August, A. D. 1869, and for the payment of which, and the interest thereon, the county court of said county shall from time to time, levy and cause to be collected in the same manner as county taxes, a special tax which shall be levied on the real estate lying within the district, so voting at said election.

In testimony whereof, the said County of Platte, by order of the county court, has caused these presents to be executed by [SEAL.] the signature of the presiding justice of said court, attested by the clerk thereof, with the seal of said county affixed, at the office in Platte City, Platte county, Missouri, this fourth day of October, A. D. 1870.

T. H. TALBOTT,
Presiding Justice.

Attest: T. W. PARK, *Clerk.*

Endorsed.

No. —. STATE OF MISSOURI. $1,000.

Platte County Twenty-year Bond.

Principal payable October 1st, 1890.

Interest payable first of April and first of October, at the American Exchange National bank in the city and State of New York.

The plaintiff avers that he is the owner of twelve past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial
4 number nineteen and in each of which the said defendant promises to pay bearer fifty dollars, for value received, at the

American Exchange National bank, in the city of New York, on the first day of April, A. D. 1880, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, Mo., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 19 1880, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner of twelve past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number twenty and in each of which said defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, 1880, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of the bond printed thereon, and are in the words and figures following, to wit:

PLATTE CITY, MISSOURI, *October* 4, 1870.

The County of Platte, in the State of Missouri,

5 Promises to pay to bearer, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. 20 D. 1880, being semi-annual interest on bonds numbered —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff further avers that he is the owner of twelve past-due and unpaid coupons from above-mentioned bond, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number twenty-one and in each of which said defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1881, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the num-

ber printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MISSOURI, *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1881, being semi-annual interest on bond number —, issued to the Chicago & Southwestern Railway Company.

21

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

6 And plaintiff avers that he is the owner and holder of twelve past-due and unpaid coupons from above-mentioned bond, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number twenty-two and in each of which said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1881, for semi-annual interest on the bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MISSOURI, *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1880, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

22

T. H. PARK, *Clerk.*
T. W. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of twelve past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number twenty-three and in each of which defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1882, for semi-annual interest on bonds to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to number of bond printed thereon, and they are in the words and figures following, to wit:

7 PLATTE CITY, MISSOURI, *October* 4, 1870.

The Court- of Platte, in the State of Missouri, $50.00.

Promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, 23 in the city of New York, on the first day of April, A. D. 1882, being semi-annual interest on bond number —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of twelve past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 24 and in each of which the said defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1882, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MISSOURI, *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National 24 bank, in the city of New York, on the first day of October, A. D. 1882, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

8 And the plaintiff avers that he is the owner and holder of twelve past-due and unpaid coupons from above-mentioned bond, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 25 and in each of which said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1883, for semi-annual interest on the bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay to bearer the sum of fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1883, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

25

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46. The said coupons are serial number 26 and in each of which the said defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1883, for semi-annual interest on the bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number printed thereon, and they are in the words and figures following, to wit:

9 PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1883, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway —.

26

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered # 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number twenty-seven and in each of which said defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1884, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of the bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri,

Promises to pay bearer, for value received, fifty dollars, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1884, 27 being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

10 & 11 And plaintiff avers that he is the owner and holder of twelve past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 28 and in each of which the said defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1884, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of the bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the *County* of *Platte,* $50.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National 28 bank, in the city of New York, on the first day of October, A. D. 1884, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 29 and in each of which the said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1885, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to number of bond printed thereon, and they are in the words and figures following, to wit:

12 PLATTE CITY, MISSOURI, *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 29 1885, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And the plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 30 and in each of which the defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1885, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. 30 D. 1885, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

13 And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number thirty-one and in each of which the said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1886, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of the bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, Mo., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1886, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

31

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bond-, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 32 and in each of which the said defendant promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1886, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of the bond printed thereon, and they are in the words and figures following, to wit:

14

PLATTE CITY, Mo., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.

Promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1886, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

32

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial No. 33 and in each of which said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1887, for semi-annual interest on bond to which it belon-s, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri,

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1887, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

33

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

15 And plaintiff avers that he is the owner of 12 past-due and unpaid coupons on above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number thirty-four and in each of which said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1887, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, *October* 4, 1870.

The County of Platte, in the State of Missouri,

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1887, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

34

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And the plaintiff avers that he is the owner of 12 past-due and unpaid coupons on above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 35 and in each of which the said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1888, for semi-an-ual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of the bond printed thereon, and they are in the words and figures following, to wit:

16 PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri,

Promises to pay bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1888, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company. 35

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And the plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 36 and in each of which the said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, on the first day of October, A. D. 1888, for s-mi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.00.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1888, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company. 36

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Judge.

And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons
17 are serial number 37 and in each of which the said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of April, A. D. 1889, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National 37 bank, in the city of New York, on the first day of April, A. D. 1889, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Justice.

And plaintiff avers that he is the owner and holder of 12 past-due and unpaid coupons from above-mentioned bonds, numbered 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46; that said coupons are serial number 38 and in each of which said defendant promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1889, for semi-annual interest on bond to which it belongs, issued to the Chicago & Southwestern Railway Company. Said coupons are exact copies of each other, except as to the number of bond printed thereon, and they are in the words and figures following, to wit:

PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri, $50.

18 Promises to pay to bearer fifty dollars, for value received, at the American Exchange 38 National bank, in the city of New York, on the first day of October, A. D. 1889, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company.

T. W. PARK, *Clerk.*
T. H. TALBOTT,
Presiding Judge.

Plaintiff further avers that there are in all 240 coupons at $50.00 each, making a face value of $12,000.00, for which sum he prays special judgment, with interest on $600.00 from the first day of April, A. D. 1880, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1880, at the rate of 6 % per annum; with interest on $600.00 from the first day of April, A. D. 1881, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1881, at the rate of 6 % per annum; with interest on $600.00 from the first day of April, A. D. 1882, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1882, at the rate of 6 % per annum; with interest on $600.00 from the first day of April, A. D. 1883, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1883, at the rate of 6 % per annum; with interest on $600.00 from the 1st day of April, A. D. 1884, at the rate of 6 % per annum; with interest on $600.00 from the first day of

October, A. D. 1884, at the rate of 6% per annum; with interest on $600.00 from the first day of April, A. D. 1885, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1885, at the rate of 6 % per annum; with interest on $600.00 from the first day of April, A. D. 1886, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1886, at the rate of 6 % per annum; with interest on $600.00 from the first day of April, A. D. 1887, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1887, at the rate of 6 % per annum; with interest on $600 from the first day of April, A. D. 1888, at the rate of 6 % per annum; with interest on $600.00 from the first day of October, A. D. 1888, at the rate of 6 % per annum; with interest on $600.00 from the first day of April, A. D. 1889, at the rate of 6 % per annum; with interest on $600 from the first day of October, A. D. 1889, at the rate of 6 % per annum.

And plaintiff further avers that said bonds from which the coupons in this suit were detached were issued under and by virtue of the provisions of the acts to incorporate the Platte & Ft. Des Moines Railroad Company, approved January 4, 1860; also under and by virtue of the provisions of an act entitled "An act to amend an act entitled 'An act to facilitate the construction of the railroads in the State of Missouri,'" approved March 23, 1868, amended March 24, 1870, and in accordance with the will of a majority of the taxable inhabitants of that portion of Greene township lying and being east of the range line between 34 and 35, in said county, voting at an election held at Camden Point, in said district, on the 17th day of August, 1869; and plaintiff further avers that said district (being a portion of Greene township, in said county) has recognized and acknowledged the validity of said bonds by paying the interest thereon for two years as the same became due, and the county court of Platte county has recognized their validity by levying and collecting said tax for the paying of said interest.

Plaintiff further avers that he has purchased the bonds with interest coupons attached long before the maturity of said bonds or said interest coupons; that he purchased the same in open market for an investment, paying therefor a good and valuable consideration, without notice of any claimed defects or irregularity in their issue and relying on all laws and judicial decisions then in force and applicable thereto and on the faithful and honest action of the county officials for their validity.

And plaintiff further avers that as said interest coupons became due the same were duly presented for payment at the place where they are made payable, and payment thereof was demanded and refused.

Wherefore plaintiff prays for special judgment against said defendant for the amount of the interest coupons herein sued on, with interest thereon, at the rate of six per cent. per annum, from the date of their maturity, and the further sum of $20,000.00 damages and costs herein sustained; the said judgment to be a lien on the real estate situate in that portion of Greene township lying and

being east of the range line between 34 and 35, the taxable inhabitants of which voted for said subscription August 17, 1869, at the election held at Camden Point, in the name of the county of Platte, and to be paid by the special tax levied and collected by the county court in accordance with the terms of the act under which the bonds were issued.

SANDERS & BOWERS,
For Plaintiff.

And now here, upon the 8th day of October, 1889, the clerk of the United States circuit court was ordered by Sanders & Bowers, attorneys for plaintiff, to issue a summons for the defendant, which was done on the 16th day of October, 1889, and upon the summons was endorsed by the United States marshall the following return:

ST. JOSEPH DIVISION OF THE WESTERN DISTRICT OF MISSOURI, } *sct:*

I do hereby certify that I served the within writ by delivering a true copy thereof, together with a true copy of the petition
21 in the cause, to Jesse J. Blakely, clerk of the county of Platte, in the office of the county clerk, at Platte City, Platte county, Missouri, on the 19th day of October, 1889; all done in the St. Joseph div. of the western dist. of Missouri.

ELIJAK GATES,
United States Marshall,
By J. E. GATES, *Deputy.*

And afterwards, to wit, on the 7th day of April, 1890, there was filed in the office of the United States circuit court the answer of the defendant to plaintiff's petition; which said answer appears and is in words and figures following, to wit:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

F. L. DELAND, Plaintiff,
vs.
THE COUNTY OF PLATTE, Defendant. }

In answer to the petition plead herein the defendant denies each and every allegation contained therein.

Wherefore, having fully answered, the defendant prays to be discharged, with its costs.

JOHN W. COOTS,
Att'y for Def't.

And afterwards, to wit, on the same day, comes the defendant, by its attorneys, and withdraws the demurrer heretofore filed and files answer; which said answer appears and is in the words and figures as above set forth.

And afterwards, to wit, on the 8th day of April, A. D. 1890, come the parties, plaintiff and defendant, by their respective attorneys, and file stipulation; and come now the parties, by their re-
22 spective attorneys, and this cause, coming on regularly to be heard, is now here taken up and submitted to the court and by the court taken under advisement.

And afterwards, to wit, on the 5th day of November, A. D. 1890, being at the regular November term of said court, the following further orders were made and proceedings had in said cause, to wit:

F. L. DELAND, Plaintiff,
vs.
THE COUNTY OF PLATTE.

This cause having been submitted to the court and taken under advisement, the court now here, on this 5th day of November, A. D. 1890, finds for the defendant.

It is therefore ordered and adjudged by the court that the plaintiff take nothing by his suit, but that the defendant go hence without day and recover of the plaintiff its costs in this behalf expended and have thereof execution.

And afterwards and within four days after the rendition of said judgment in said cause, to wit, on the 5th day of November, 1890, plaintiff filed his motion for new trial; which said motion, being taken up, seen, and heard by the court, was by the court overruled; whereupon plaintiff filed his motion for appeal; which motion was by the court sustained and appeal allowed and plaintiff granted leave to file bill of — on or before the first day of January, 1891.

On the 26th day of December, A. D. 1890, the plaintiff presented and filed with the clerk of this court his bond for appeal, with George A. Sanders, Frank W. Tracy, and William R. Bowers as sureties; which bond was approved by the clerk and filed in said cause.

23 And afterwards, to wit, on the 22nd day of December, A. D. 1890, the following further proceedings were had and done in said cause, to wit:

Comes now the plaintiff and files assignment of errors; which said assignment of errors appears and is in words and figures following, to wit:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

FREDERICK N. DELAND
vs.
THE COUNTY OF PLATTE.

Assignment of Errors.

And now comes the plaintiff, by his attorney, and makes the following assignment of errors to the special findings of the court:

1st. The court erred in finding that the election held by the taxable inhabitants of Camden Point on the 17th day of August, 1869, only authorized the county court to levy and collect a tax sufficient to pay interest on *and* the amount voted as a subscription to the railroad company, and did not authorize the issue of bonds and coupons for interest in payment of the amount voted at that time.

2nd. The court erred in its construction and application of the authority given in reference to such cases as this at bar of the act of March 23rd, 1868, and the amendatory acts of March 24, 1870, and in the distinction the court makes between township and a portion of a town.

3rd. The court erred in construction given to section 28, article 1, of the constitution of the State of Missouri as to retroactive or curative laws and in holding that the act of March 24, 1870
24 (added section 7 to the act of March 23, 1868), was unconstitutional.

4th. The court erred in applying the prohibitory powers of the constitution of Missouri of 1875 to the constitution of 1865, under which last constitution these bonds and coupons in question were issued.

5th. The court erred in holding that the records of the county court as to the election *was* not conclusive. "The charter," says the court, "required a majority of the taxable inhabitants" to vote for subscription. The records of the county state that "the taxable inhabitants aforesaid voted in favor of such subscription."

6th. The court erred in holding that there could be no ratification in this case.

7th. The court erred in giving judgment for costs in favor of the defendant and against the plaintiff.

8th. The court erred in holding invalid the coupons in controversy in this case and in not giving judgment for the plaintiff for the amount of his coupons and interest thereon, as claimed in the complaint, and for his costs.

9th. The court erred in finding the issues in favor of the defendant, contrary to the law arising upon the evidence introduced by the plaintiff and the facts found by the court.

10th. The court erred in finding the issues against the plaintiff and in not entering judgment in favor of the plaintiff for the amount of his claim and cost.

11th. The court was in its rulings and findings in other respects informal, contrary to law, and erroneous.

12th. The court erred in overruling plaintiff's motion for a new trial, for reasons therein stated, and in entering judgment against the plaintiff.

SANDERS & BOWERW,
For Plaintiff.

25 And afterwards, to wit, on the 24th day of December, A. D. 1890, the following further proceedings were had and done in said cause, to wit:

F. L. DELAND, Plaintiff,
vs.
COUNTY OF PLATTE.

Comes now the plaintiff and files bill of exceptions; which said bill of exceptions appears and is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In the Circuit Court, St. Joseph Division of the Western District of Missouri.

FREDERICK N. DELAND, Plaintiff,
against
THE COUNTY OF PLATTE, Defendant.

Be it remembered that amongst the acts and proceedings of the circuit court in the St. Joseph division of the western district of Missouri and at the April term thereof, A. D. 1890, the following, among other, proceedings were had:

This cause coming on to be heard, the coupons sued on were introduced in evidence, and this cause was then submitted to the court upon the following stipulations and agreed statement of facts, to wit:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States, St. Joseph Division of the Western Judicial District of the State of Missouri, November Term, A. D. 1889.

FREDERICK N. DELAND
vs.
THE COUNTY OF PLATTE, MO.

Assumpsit. Damages, $20,000.

Stipulations.

"It is hereby stipulated and mutually agreed upon by the parties to this case, by and through their attorneys, Sanders &
26 Bowers, for the plaintiff, and John W. Coots, for the defendant, that this cause be submitted to the court for trial without the intervention of a jury, a jury being specially waived by the parties to this case.

"That the certified copy of the records of the county court of Platte county in reference to the calling of the election, the vote held, and the issuing of the bonds and coupons in controversy in this case, signed and certified to under the seal of the court by Jesse J. Blakely, county clerk, at his office, in Platte City, Mo., February 15, A. D. 1888, and hereto annexed, is a true copy of the records of the defendant, The County of Platte, in all of its acts of record in reference to the preliminary steps as to the election and the issue of

the bonds and coupons in controversy in this case and the subsequent payment of interest for a time thereon.

"That the copies in the petition of the bonds and coupons involved in this case are true and correct copies of said bonds and coupons, and that the signatures of the officials purporting to sign the same are the genuine signatures of T. W. Park, then clerk, and T. H. Talbott, then presiding justice, of the county of Platte, Missouri.

"That the statement, hereto attached, of the bonds and coupons involved in this case is correct, and the amount due the plaintiff (if anything) April 10, 1890, is fifteen thousand eight hundred dollars and his reasonable costs of suit.

"That this case be submitted to the court on written briefs; the brief of the plaintiff to be filed with the clerk of the court by the fifteenth day of May, A. D. 1890, and the brief of the defendant by the 15th day of June, A. D. 1890, and the reply brief of the plaintiff by the first day of July, 1890.

SANDERS & BOWERS,
Att'ys for Pl't'ff.

W. P. HALL,
Att'y for Defendant.

NOTE.—Mr. Hall, who signs the above stipulations for the defendant, appeared in the case at the submission of the evidence in the case for himself and for Mr. Coots and at Mr. Coots' request, who was engaged in attending court as prosecuting attorney of Platte county, Missouri.

"*Copy of Records, Platte County, Missouri, with Reference to Notice of Election and Issue of Bonds of Platte County, Missouri.*

"SATURDAY, *July* 10, 1869.

"Be it remembered that at the term of the county court held at Platte City, Platte county, Missouri, on Saturday, the 10th day of July, 1869, there were present as follows, to wit: Honorable T. H. Talbott, president; Honorables Jacob Hamm and Benjamin R. Morton, justices, of said court; George W. Belt, sheriff, and Daniel P. Lewis, clerk."

Book 8, page 206.

STATE OF MISSOURI, } ss:
County of Platte, }

Adjourned Term, 1869.

"In the county court of said county, on the 10th day of July, 1869, the following, among other, proceedings were had, viz:

"Now, at this time, comes the president and directors of the Chicago & Southwestern Railway Company and presents their petition, which is in the words and figures following, to wit:

"To the honorable the county court of Platte county, Missouri:

"The undersigned, president and directors of the Chicago & Southwestern Railway Company, a corporation organized under a special law of the State of Missouri entitled 'An act to incorporate the Platte City and Ft. Des Moines Railway Company,' approved Jan'y 4, 1860, and by certain other acts of the General Assembly of the State of Missouri amendatory thereof, respectfully make and present to your honors this their petition, praying the court, under
27 the seventh section of said act, that a vote may be taken in a strip of country, thro' which said railway may pass, hereinafter mentioned and described and the same not exceeding ten miles on either side of said road; that the inhabitants thereof are desirous of taking fifty thousand dollars of the stock in the said railway company and of voting upon themselves a tax for the payment of the same, which said strip is as follows:

"All that part of the municipal township of Green lying and being east of the range line between 34 and 35, and the said railway company hereby agrees that said tax shall never be collected or paid unless said railway is located and constructed so as to run within one mile of the town of Camden Point.

Respectfully submitted.

F. H. WINSTON, *President.*
C. A. PERRY,
JAMES N. BURNES,
JAMES L. DAVIS,
H. EDGERTON,
H. M. ALLEN,
BENJAMIN BONIFANT,
N. P. OGEDEN,
A. L. PERRIN, *Directors.*

"And the county court, being fully advised in the premises, orders and adjudges that the prayer be granted; and it is further ordered that an election in said strip be, and the same is hereby, ordered to be held at Camden Point, in Green township, in Platte county, Missouri, on Tuesday, August 17, 1869, and the manner of holding said election shall be as follows: All the taxable inhabitants of the territory above described shall be entitled to vote by ballot, on which shall be written or printed the words or figures 'In favor of and assenting to the tax to secure the location and construction of the Chicago & Southwestern railway through the strip of land mentioned in petition' or 'Opposed to and dissenting from the tax to secure the location and construction of the Chicago & Southwestern railway through the strip of land mentioned in the petition;' and said first-mentioned ballot shall be deemed and counted in favor of the tax and said last-mentioned ballot shall be deemed and counted against said tax. It is further ordered that Elliott Miller, James S. Owens, and Miles Harrington be, and they are, appointed judges of said election, to hold and make return thereof according to law; and the sheriff is ordered to give notice thereof according to law."

Book H, page 244.

"MONDAY, *September* 27, 1869.

"Court meets pursuant to adjournment.

"Present: Hon. T. H. Talbott, president; Hon. Jacob Hamm and Benjamin Morton, justices; George W. Belt, sheriff; Daniel P. Lewis, clerk.

"And the following, among other, proceedings were had, to wit:

"In the matter of the election held at Camden Point on the 17th day of August, 1869, in pursuance of an order of this court made on the 10th day of July, 1869, and the returns of the poll books and ballots and the certificates of the judges and clerks of said election.

"Now, at this day, came Wm. H. Thomas and W. Stitt and file their motion to declare the vote taken at said election a nullity and of non-effect.

"Be it remembered — at an adjourned term of a county court held at Platte City, Missouri, on the 4th day of October, A. D. 1869, there were present as follows, to wit: Honorable T. H. Talbott, president; Hon. Jacob Hamm and Benjamin R. Morton, justices of said court; George W. Belt, sheriff; Daniel P. Lewis, clerk."

Book H, page 250.

"And in said court the following, among other, proceedings were had, to wit:

"In the matter of the election held at Camden Point, in Green township, on the 17th day of August, 1869, in relation to
28 the subscription of $50,000.00 to the Chicago & Southwestern Railway Company.

"Now, at this day, comes the petitioners for said election, as well as Wm. H. Thomas and Wm. E. Stitt, by their respective attorneys, and the motion of said Thomas and Stitt, filed herein, to declare the said election a nullity and of non-effect being taken up and argued, the same is sustained by the court. It is therefore considered by the court that the vote taken at Camden Point on the 17th day of August, 1869, in pursuance of an order of this court made on the 10th day of July, 1869, be, and the same is, declared a nullity and of non-effect; and it is further ordered, and considered by the court that the said petitioners for the said election pay the costs of this proceeding, and that execution issue therefor."

Book H, page 474.

"Be it remembered that at an adjourned term of the county court held at Platte City, Mo., on the 3rd day of October, 1870, there were present as follows, to wit:

"Hon. Thomas H. Talbott, presiding justice of said court; Honorables Jacob Hamm, justice of said court, George W. Belt, sheriff, and Dan'l P. Lewis, clerk, by Ira Norris, deputy.

"And in said court the following, among other, proceedings were had, to wit:

"In the matter of the subscription of the tax-payers of a 'strip in Greene township,' made in July, 1869, to the Chicago & Southwestern Railway Company the motion of the issuance of the bonds by the court is now here submitted to the court, which motion is taken under advisement until Wednesday, the 5th day of October, instant."

Book H, page 476.

"And on Wednesday, the 5th day of October, the following, among other, proceedings were had, to wit:

"Court met pursuant to adjournment.

"Present: Honorable T. H. Talbott and Honorable Jacob Hamm and Benjamin R. Morton, justices of said court; Geo. W. Belt, sheriff, and Dan'l P. Lewis, clerk.

"In the matter of the motion made to this court on the 3rd day of October, instant, for the issuance of the bonds of the county for the amount of the subscription made by the tax-payers within a 'strip of Greene township' in the month of August, 1869, to the Chicago & Southwestern Railway Company it is now here ordered that this cause be continued to the next term of this court.

"Be it remembered that at an adjourned term of the county court held at Platte City, Mo., on the 14th day of November, 1870, there were present as follows, to wit:

"Present: Honorable T. H. Talbott, president; Hon. Jacob Hamm and Benj. R. Morton, justice- of said court; Geo. W. Belt, sheriff, and Dan'l P. Lewis, clerk."

Book H, page 496.

"And at said court the following, among other, proceedings were had, to wit:

"In the matter of the motion of Joseph E. Merryman, made to this court on the 3rd day of October, 1870, for the issuance of the bonds of the county for the amount of the subscription made by the tax-payers within a strip in Greene township in the month of August, 1869, to the Chicago & Southwestern Railway Company it is now here ordered by the court that the motion aforesaid be, and the same is, overruled by the court."

Book H, pp. 592, 593.

29 "Be it remembered that at an adjourned term of the county court of Platte county held on the 14th day of February, 1871, there were present as follow-, to wit: Honorable T. H. Talbott, presiding justice; Honorable John S. Brassfield and Jacob Hamm, justices; George W. Belt, and T. W. Park, clerk.

"And in said court the following, among other, proceedings were had, to wit:

"Whereas the court on the 10th day of July, A. D. 1869, made an order submitting to the vote of the taxable inhabitants of the strip of territory in Platte county hereinafter mentioned and described a proposition to subscribe to $50,000 of the capital stock of the Chicago & Southwestern Railway Company; and whereas at an

election held at Camden Point, in said strip, on the 17th day of August, 1869, by virtue of the provisions of an act to incorporate the Platte & Ft. Des Moines Railroad Company, approved January 4, 1860, the taxable inhabitants aforesaid voted in favor of such subscription; and whereas by an act of the General Assembly of the State of Missouri entitled 'An act to amend an act entitled "An act to facilitate the construction of railroads in ,the State of Missouri, approved March 23, 1868,"' approved March 24, 1870, the court was authorized to issue bonds in payment of such subscription; and whereas, in consideration of the order and vote above recited, said railway company has located, constructed, and completed its railway through said strip of territory and erected and completed a depot therefor within one mile of the town of Camden Point: Therefore it is ordered by the court that fifty bonds of the county, each for $1,000, be issued and delivered to said railway company, dated October 4, 1870, which bonds shall be executed by the presiding justice and the clerk hereof, attested by the seal of the court, due 20 years after date, at the American Exchange National bank, in the city of New York, with forty semi-annual coupons, each for $50.00, for interest accruing thereon, executed and payable in like manner as said bonds.

"It is further expressly ordered and provided that the subscription bonds and coupons aforesaid are made and executed for and on behalf of the taxable inhabitants of all that part of the municipal township of Green, in said county, lying east of the range line between 34 and 35, and the said bonds and coupons shall be paid by the taxable inhabitants exclusively, as provided by law, and none thereof shall ever be a charge on the county of Platte; and it is further ordered that the said Chicago & Southwestern Railway Company shall pay all expenses necessary for the transferral of the funds to New York to pay the interest and bonds aforesaid, and the said company shall pay the expenses of the execution of the bonds and all costs attending the same."

Book H, page 594.

"Be it remembered that at an adjourned term of the county court of Platte county, Missouri, there were present as follows on Friday, the 17th day of February, 1871: Hon. John S. Brassfield and Jacob Hamm, justices; George W. Belt, sheriff; T. W. Park, clerk.

"At which said court, among others, the following proceedings were had, to wit:

"Now here comes T. W. Park, clerk, and files the receipt of James N. Burnes, vice-president of the Chicago & Southwestern Railway Company, for fifty bonds issued in accordance with an order made by this court on the 14th day of February, 1871."

Book H, page 668.

30 "Be it remembered that at an adjourned term of the county court held at Platte City, Platte county, Mo., on Wednesday, June 14th, 1871, there were present as follows, to wit:

"Hon. T. H. Talbott, president; Hon. John S. Brassfield and

Jacob Hamm, justices; Geo. W. Belt, sheriff, and T. W. Park, clerk.

"At which said court the following, among other, proceedings were had, to wit:

"Ordered by the court that the State and county tax be levied on the road-bed, ties, iron track, and buildings of the Chicago & Southwestern Railway Company for the use and benefit of the strip of country in Greene township, in Platte county—that wherein the inhabitants voted a subscription of fifty thousand dollars to said railway company—and when said State and county taxes shall be collected the same shall be applied to the payment, in the name of Platte county, for said strip and which said strip is bound to pay; and it is further ordered that said property be, and the same is, valued at the sum of two hundred dollars and fifty thousand dollars, and that a copy of this order be certified to the collector and to the proper officer of said company; and it is further ordered that the levy be fixed at the same rate as is now fixed for the State and county purposes."

Book H, page 791.

"Be it remembered that at an adjourned term of the county court of Platte county, Missouri, held at Platte City, Mo., on Monday, March 18, 1872, there were present as follows, to wit:

"Hon. T H. Talbott, president; Honorables Jacob Hamm and John S. Brassfield, justices; T. W. Park, clerk, and Geo. W. Belt, sheriff.

"At which court the following, among other, proceedings were had, to wit:

"In the matter of the subscription made by the tax-payers in the strip in Green township under an order of the county court made on the 10th day of July, A. D. 1869.

"Ordered by the court that the sum of $2,500.00 realized out of and by virtue of an order made on the 14th day of June, 1871, be, and the same is hereby, ordered to be transferred to the American Exchange National bank, in the city of New York, to pay the interest falling due on said bonds on the 1st day of April next, and that J. E. Merriman be appointed agent to settle the matter and report to this court at the May term, it being understood that the payment is made under the law in relation to the subscription of townships, passed 24th March, 1870."

Book H, page 847.

"Be it remembered that at an adjourned term of the county court of Platte county, held at Platte City, Missouri, on Tuesday, the 4th day of June, A. D. 1872, there were present as follows, to wit:

"Hon. T. H. Talbott, president; Honorables Jacob Hamm and John S. Brassfield, justices; T. W. Park, clerk, and George W. Belt, sheriff.

"At which court, among others, the following proceedings were had, to wit:

"Ordered that a tax of one-half of one per cent. be levied upon every $100 valuation of the real and personal property in the strip of territory voting a subscription of bonds to the Chicago & Southwestern railroad for the purpose of paying the interest on said bonds, and that the clerk extend the same up'in said tax book for 1872, in appropriate colum-s."

Book L, page 57.

31 "Be it remembered that at an adjourned term of the county court of Platte county held at Platte City, Missouri, Monday, February tenth, 1873, there were present as follows: Honorable John S. Brassfield, president; Honorable Jacob Hamm and Wm. E. Cunningham, justices; T. W. Park, clerk, and E. McD. Coffey, sheriff.

"At which said court the following, among other, proceedings were had, to wit:

"Ordered by the court that the payment of coupons No. 1 on bonds of Greene township to the Chicago & Southwestern Railway Company be, and the same hereby —, refused."

Record L, pp. 84, '5.

Be it remembered that at an adjourned term of the county court of Platte county held at Platte City on Monday, the third day of March, 1873, there were present as follows, to wit:

Hon. John S. Brassfield, president; Hon. Jacob Hamm and Wm. E. Cunningham, justices; T. W. Park, clerk; E. McD. Coffey, sheriff.

"At which said court, among others, the following proceedings were had, to wit:

"It is hereby ordered that Stephen G. Woodson, county attorney, be, and he is hereby, required to take such action as may be necessary to collect the taxes paid into the State treasury by the Chicago & Southwestern Railway Company assessed in said county of Platte for the year 1872 and pay the same into the county treasury to the credit of the Green township strip fund, and to this end the said attorney is authorized to proceed at once to Jefferson City and make demand for said money, and he is also authorized to sign a receipt for and in the name of Platte county for any amount that may be paid him in accordance with the above order."

Book L, page 86.

"Be it remembered that at an adjourned term of the county court of Platte county, Missouri, held at Platte City on Monday, the 24th day of March, 1873, there were present as follows, to wit: Honorable John S. Brassfield, president; Honorables Jacob Hamm and Wm. E. Cunningham, justices; T. W. Park, clerk, and E. McD. Coffey, sheriff.

"At which said court the following, among other, proceedings were had, to wit:

"Now comes James N. Burnes and files motion to instruct the

county treasurer to forward to New York a sufficient sum of money to pay the interest falling due April 1st, 1873, upon the bonds of Green township to the Chicago & Southwestern Railroad Company, which motion is continued and set for hearing tomorrow."

Book L, pp. 89, 90.

"And on Tuesday, the 25th day of March, the following, among other, proceedings were had and entered of record, to wit:

"In the matter of the motion of James N. Burnes and the issue of the bonds to the Chicago & Southwestern Railway Company by Platte county for an- on account of the tax-payers within the strip of country on both sides of the road in Green township it is ordered by the court, no member dissenting, that the treasurer of Platte county at once forward to the American Exchange National bank, in the city of New York, the sum of twenty-five hundred dollars to meet the interest falling due on said bonds on the first day of April next, and credit the fund paid in on account of the tax on said railway company and now in his hands belonging to said strip or collected from the Chicago, Rock Island & Pacific Railroad Company in Platte county for the year 1872."

STATE OF MISSOURI, } ss:
County of Platte, }

"I, Jesse J. Blakely, clerk of the county court within and for the county and State aforesaid, do hereby certify that the foregoing is a full, true, and complete transcript of the proceedings in regard to the matter known as the issuance of the Green township strip bonds as full as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court. Done at office, in Platte City, Missouri, this the 15th day of February, A. D. 1888.

[SEAL.] JESSE J. BLAKELEY,
County Clerk."

APPENDIX.

Copy of Bonds and Coupons.

Fifty bonds of one thousand dollars each were issued by the county court of Platte county, Missouri, with the coupons for interest at the rate of 10% per annum, payable at the American Exchange National Bank of New York City on the first days of April and October. The bonds are an exact fac-sim-le of each other except as to number, and are numbered from 1 to 50. The following is a copy of bond No. 35:

"$1,000. UNITED STATES OF AMERICA. $1,000.

STATE OF MISSOURI (Vignette), *County of Platte.*

Platte County Twenty-year Bond.

No. 35.

Know all men by these presents that the county of Platte in the State of Missouri acknowledges itself to owe and to be indebted to and promises to pay to the bearer the sum of one thousand dollars, on the first day of October one thousand, eight hundred and ninety, for value received at the American Exchange National bank, in the city and State of New York, with interest thereon from the 4th day of October, A. D. 1870, at the rate of ten per cent. per annum until paid, which interest shall be due and payable semi-annually, on the first days of April and October of each year, on presentation of the proper interest coupon as annexed hereto at the American Exchange National bank.

This is one of fifty bonds of like date and amount and effect numbered from one to fifty, both numbers inclusive, issued in pursuance of an election held by the taxable inhabitants of Camden Point on the 17th day of August, A. D. 1869, and for the payment of which, and the interest thereof, the county court of said county shall, from time to time levy and cause to be collected in the same manner as county tax, a special tax, which shall be levied on the real estate lying within the district so voting at said election.

In testimony whereof, the said county of Platte, by order of its county court, has caused these presents to be executed by the signatures of the presiding justice of said court, attested by the clerk thereof, with the seal of the county affixed, at his office in Platte City, Platte county, Missouri, this 4th day of October, A. D. 1870.

T. H. TALBOTT,
Presiding Justice.
(Vignette.)

T. W. PARK, *Clerk.* [SEAL.]"

33 The coupons attached are exact fac-sim-le- of each other, save as to the number of the bonds from which they are taken, their serial numbers, and date when due. A copy of coupon from bond No. 35, series 38, and due October 1st, 1889, is in the words and figures following, to wit:

"PLATTE CITY, MO., *October* 4, 1870.

"The County of Platte, in the State of Missouri, $50.

"Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the first day of October, A. D. 1889, being semi-annual interest on bond No. 35, issued to the Chicago & Southwestern Railway Company.

T. H. TALBOTT,
"*Presiding Justice.*

"T. W. PARK, *Clerk.*"

(Endorsed on each bond.)

"No. 35. STATE OF MISSOURI. $1,000.

"*Platte County Twenty-year Bond.*

"Principal payable October 1st, 1890.

"Interest payable first April and October, at the American Exchange National bank, in the city and State of New York."

And the same was taken under advisement by the court and continued until the November term, A. D. 1890, of said court, and at said term and on the first day thereof, the same being the 3rd day of November, A. D. 1890, the court, after having fully considered the evidence, found the issues for the defendant and declared the law to be as follows:

In the Circuit Court of the United States, for the St. Joseph Division, of the Western District of Missouri.

FREDERICK N. DELAND
against
THE COUNTY OF PLATTE.

A jury having been waived, on stipulation of parties, this case was submitted to the court; and, from the record, evidence, and stipulations of counsel, the court makes the following special finding of facts:

Stipulations.

It is hereby stipulated and mutually agreed upon by the parties to this case, by and through their attorneys, Sanders & Bowers, for the plaintiff, and John W. Coots, for the defendant, that this cause be submitted to the court for trial without the intervention of a jury, a jury being specially waived by the parties to this case.

That the certified copy of the records of the county court of Platte county in reference to the calling of the election, the vote held, and the issuing of the bonds and coupons in controversy in this case, signed and certified to, under the seal of the court, by Jesse J. Blakely, county clerk, at his office, in Platte City, Mo., February 15, A. D. 1888, and hereto annexed, is a true copy of the rec-

34 ords of the defendant, The County of Platte, in all of its acts of record in reference to the preliminary steps as to the election and the issue of the bonds and coupons in controversy in this case and the subsequent payment of the interest for a time thereon.

That the copies in the petition of the bonds and coupons involved in this case are true and correct copies of said bonds and coupons, and that the signatures of the officials purporting to sign the same are the genuine signatures of T. W. Park, clerk, and T. H. Talbott, then presiding justice of the county of Platte, Missouri.

That the statement hereto attached of the bonds and coupons involved in this case is cor-ect, and the amount due the plaintiff (if anything) April 10, 1890, is $15,800 and his reasonable costs of suit.

"Copy of Records, Platte County, Missouri, with Reference to Notice of Election and Issue of Bonds of Platte County, Missouri.

SATURDAY, *July 10th*, 1869.

Be it remembered that at the term of the county court held at Platte City, Platte county, Missouri, on Saturday, the 10th day of July, 1869, there were present as follows, to wit: Hon. T. H. Talbott, president; Hons. Jacob Hamm and Benj. R. Morton, justices of said court; Geo. W. Belt, sheriff, and Daniel P. Lewis, clerk."

Book H, page 206.

STATE OF MISSOURI, } ss:
County of Platte, }

Adjourned Term, 1869.

In the county court of said county, on the 10th day of July, 1869, the following, among other, proceedings were had, viz:

Now at this time comes the president and directors of the Chicago and Southwestern Railway Company and present their petition, which is in the words and figures following, to wit:

To the honorable the county court of Platte county, Missouri:

The undersigned, president and directors of the Chicago and Southwestern Railway Company, a corporation organized under a special law of the State of Missouri, entitled "An act to incorporate the Platte City & Ft. Des Moines Railroad Company," approved January 4th, 1860, and by certain other acts of the General Assembly of the State of Missouri amendatory thereof, respectfully make and present to your honors this their petition praying the court, under the 7th section of said act, that a vote may be taken in a strip of country through which said railway may pass, hereinafter mentioned and described, the same not exceeding ten miles on either side of said road; that the inhabitants thereof are desirous of taking fifty thousand dollars of the stock in the said railway company and of voting upon themselves a tac for the payment of the same, which said strip is as follows:

All that part of the municipal township of Greene lying and being east of the range line between thirty-four and thirty-five, and the said railway company hereby agrees that said tax shall nev-r be collected or paid unless said railway is located and constructed so as to run within one mile of the town of Camden Point.

Respectfully submitted.

F. H. WINSTON, *President.*
C. A. PERRY,
JAMES N. BURNES,
JAMES L. DAVIS,
H. EDGERTON,
H. M. ALLEN,
BENJAMIN BONIFENT,
N. P. OGDEN,
A. L. PERRIN, *Directors.*

35 "And the county court, being fully advised in the premises, orders and adjudges that the prayer be granted; and it is further ordered that an election in said strip be, and the same is hereby, ordered to be held at Camden Point, in Greene township, in Platte county, Missouri, on Tuesday, August 17th, 1869, and the manner of holding said election shall be as follows: All the taxable inhabitants of said territory above described shall be entitled to vote by ballot, on which shall be written or printed the words or figures 'In favor of and assenting to the tax to secure the location and construction of the Chicago and Southwestern railway through the strip of land mentioned in petition, or 'Opposed to and dissenting from the tax to secure the location and construction of the Chicago and Southwestern railway through the strip of land mentioned in the petition;" and said first-mentioned ballots shall be deemed and counted in favor of the tax and said last-mentioned ballots shall be deemed and counted against such tax. It is further ordered that Elliott Miller, James S. Owens, and Miles Harrington be, and they are, appointed judges of said election, to hold and make return thereof according to law, and the sheriff is ordered to give notice thereof according to law.

Book H, page 244.

MONDAY, *September 27th*, 1869.

Court meets pursuant to adjournment.

Present: Hon. T. H. Talbott, president; Honorable Jacob Hamm and Benjamin Morton, justices; Geo. W. Belt, sheriff; Daniel P. Lewis, clerk.

And the following, among *the*, proceedings were had, to wit:

In the matter of the election held at Camden Point on the 17th day of August, 1869, in pursuance of an order of this court made on the 10th day of July, 1869, and the returns of the poll books and ballots and the certificates of the judges and clerks of said election.

Now, at this day, came William H. Thomas and W. Stitt and file their motion to declare the vote taken at said election a nullity and of non-effect.

Be it remembered that at an adjourned term of the county court held at Platte City, Mo., on the 4th day of October, A. D. 1869, there were present as follows, to wit: Hon. T. H. Talbott, president; Hon. Jacob Hamm and Benjamin Morton, justices of said court; George W. Belt, sheriff, and Daniel P. Lewis, clerk.

Book H, page 250.

And in said court the following, among other, proceedings were had, to wit:

In the matter of the election held at Camden Point, in Greene township, on the 17th day of August, 1869, in relation to the subscription of $50,000 to the Chicago & Southwestern Railway Company.

Now, on this day, come the petitioners for said election as well as Wm. H. Thomas and Wm. E. Stitt, by their respective attorneys, and the motion of said Thomas and Stitt filed herein to declare said election a nullity and of non-effect being taken up and argued, the same is sustained by the court. It is therefore considered by the court that the vote taken at Camden Point on the 17th day of August, 1869, in pursuance of an order of this court made on the 10th day of July, 1869, be, and the same is, declared a nullity and of non-effect; and it is further ordered and considered by the court that the said petitioners for said election pay the costs of this proceeding and that execution issue therefor.

Book H, page 474.

36 Be it remembered that at an adjourned term of the county court held at Platte City, Mo., on the 3rd day of October, 1870, there were present as follows, to wit:

Hon. Thomas H. Talbott, presiding justice of said court; Hon. Jacob Hamm, justice of said court; Geo. W. Belt, sheriff; Daniel P. Lewis, clerk, by Ira Norris, deputy.

And in said court the following, among other, proceedings were had, to wit:

In the matter of the subscription of the tax-payers in a "strip of of Greene township," made in July, 1869, to the Chicago & Southwestern Railway Company, the motion of the issuance of the bonds by the court is now here submitted to the court, which motion is taken under advisement until Wednesday, the 5th day of October, instant.

Book H, page 476.

And on Wednesday, the 5th day of October, the following, among other, proceedings were had, to wit:

Court met pursuant to adjournment.

Present: Hon. T. H. Talbott and Hon. Jacob Hamm and Benj. R. Morton, justices of said court; Geo. W. Belt, sheriff, and Daniel P. Lewis, clerk.

In the matter of the motion made to this court on the 3rd day of October, instant, for the issuance of the bonds of the county for the amount of the subscription made by the tax-payers within a "strip in Greene township" in the month of August, 1869, to the Chicago & Southwestern Railway Company, it is now here ordered that this cause be continued to the next term of this court.

Be it remembered that — an adjourned term of the county court held at Platte City, Mo., on the 14th day of November, 1870, there were present as follows, to wit:

Present: Hon. T. H. Talbott, president; Hon. Jacob Hamm and Bej. R. Morton, justices of said court; George W. Belt, sheriff, and Daniel P. Lewis, clerk.

Book H, page 496.

And at said court the following, among other, proceedings were had, to wit:

In the matter of the moti-n of Joseph E. Merryman, made to this court on the third day of October, 1870, for the issuance of the bonds of the county for the amount of the subscription made by the tax-payers within a "strip in Greene township" in the month of August, 1869, to the Chicago & Southwestern Railway Company, it is now here ordered by the court that the motion aforesaid be, and the same is, overruled by the court.

Book H, pages 592–593.

37 "Be it remembered that at an adjourned term of the county court of Platte county held on the 14th day of February, 1871, there were present as follow-, to wit: Honorable T. H. Talbott, presiding justice; Honorable John S. Brassfield and Jacob Hamm, justices; George W. Belt, —, and T. W. Park, clerk.

"And in said court the following, among other, proceedings were had, to wit:

"Whereas the court on the 10th day of July, A. D. 1869, made an order submitting to the vote of the taxable inhabitants of the strip of territory in Platte county hereinafter mentioned and described a proposition to subscribe to $50,000 of the capital stock of the Chicago & Southwestern Railway Company; and whereas at an election held at Camden Point, in said strip, on the 17th day of August, 1869, by virtue of the provisions of an act to incorporate the Platte & Ft. Des Moines Railroad Company, approved January 4, 1860, the taxable inhabitants aforesaid voted in favor of such subscription; and whereas by an act of the General Assembly of the State of Missouri entitled 'An act to amend an act entitled "An act to facilitate the construction of railroads in the State of Missouri,"' approved March 23, 1868, approved March 24, 1870, the court was authorized to issue bonds in payment of such subscription; and whereas, in consideration of the order and vote above recited, said railway company has located, constructed, and completed its railway through said strip of territory and erected and completed a depot therefor within one mile of the town of Camden Point:

"Therefore it is ordered by the court that fifty bonds of the county, each for $1,000, be issued and delivered to said railway company, dated October 4, 1870, which bonds shall be executed by the presiding justice and the clerk hereof, attested by the seal of the court, due 20 years after date at the American Exchange National bank, in the city of New York, with forty semi-annual coupons, each for $50.00, for interest accruing thereon, executed and payable in like manner as said bonds.

"It is further expressly ordered and provided that the subscription bonds and coupons aforesaid are made and executed for and on behalf of the taxable inhabitants of all that part of the municipal township of Green, in said county, lying east of the range line between 34 and 3; and the said bonds and coupons shall be paid by the taxable inhabitants exclusively, as provided by law, and -one thereof shall ever be a charge on the county of Platte; and it is further

ordered that the said Chicago & Southwestern Railway Company shall pay all expenses necessary for the transferral of the funds to New York to pay the interest and bonds aforesaid, and the said company shall pay the expenses of the execution of the bonds and all costs attending the same."

Book H, page 594.

"Be it remembered that at an adjourned term of the county court of Platte county, Missouri, there were present as follows on Friday, the 17th day of February, 1871: Hon. John S. Brassfield and Jacob Hamm, justices; George W. Belt, sheriff; T. W. Park, clerk.

"At which said court, among others, the following proceedings were had, to wit:

"Now here comes T. W. Park, clerk, and files the receipt of James N. Burnes, vice-president of the Chicago & Southwestern Railway Company, for fifty bonds issued in accordance with an order made by this court on the 14th day of February, 1871."

Book H, page 668.

38 "Be it remembered that at an adjourned term of the county court held at Platte City, Platte county, Mo., on Wednesday, June 14th, 1871, there were present as follows, to wit: Hon. T. H. Talbott, president; Hon. John S. Brassfield and Jacob Hamm, justices; Geo. W. Belt, sheriff, and T. W. Park, clerk.

"At which said court the following, among other, proceedings were had, to wit:

"Ordered by the court that the State and county tax be levied on the road-bed, ties, iron track, and buildings of the Chicago & Southwestern Railway Company for the use and benefit of the strip of country in Greene township, in Platte county, that wherein the inhabitants voted a subscription of fifty thousand dollars to said railway company, and when said State and county taxes shall be collected the same shall be applied to the payment in the name of Platte county for said strip and which said strip is bound to pay; and it is further ordered that said property be, and the same is, valued at the sum of two hundred dollars and fifty thousand dollars, and that a copy of this order be certified to the collector and to the proper officer of said company; and it is further ordered that the levy be fixed at the same rate as is now fixed for the State and county purposes."

Book H, page 791.

"Be it remembered that at an adjourned term of the county court of Platte county, Missouri, held at Platte City, Mo., on Monday, March 18, 1872, there were present as follows, to wit: Hon. T. H. Talbott, president; Honorables Jacob Hamm and John S. Brassfield, justices; T. W. Park, clerk, and Geo. W. Belt, sheriff.

"At which court the following, among other proceedings, were had, to wit:

"In the matter of the subscription made by the tax-payers in the strip in Green township under an order of the county court made on the 10th day of July, A. D. 1869—

"Ordered by the court that the sum of $2,500.00 realized out of

and by virtue of an order made on the 14th day of June, 1871, be, and the same is, hereby ordered to be transferred to the American Exchange National bank, in the city of New York, to pay the interest falling due on said bonds on the 1st day of April next, and that J. S. Merriman be appointed agent to settle the matter and report to this court at the May term, it being understood that the payment is made under the law in relation to the subscription of townships, passed 24th March, 1870."

Book H, page 847.

"Be it remembered that at an adjourned term of the county court of Platte county held at Platte City, Missouri, on Tuesday, the 4th day of June, A. D. 1872, there were present as follows, to wit: Hon. T. H. Talbott, president; Honorables Jacob Hamm and John S. Brassfield, justices; T. W. Park, clerk, and George W. Belt, sheriff.

"At which court, among others, the following proceedings were had, to wit:

"Ordered that a tax of one-half of one per cent. be levied upon every $100 valuation of the real and personal property in the strip of territory voting a subscription of bonds to the Chicago & Southwestern railroad for the purpose of paying the interest on said bonds, and that the clerk extend the same up in said tax book for 1872 in appropriate colum-s."

Book L, page 57.

39 "Be it remembered that at an adjourned term of the county court of Platte county held at Platte City, Missouri, Monday, February tenth, 1873, there were present as follows: Honorable John S. Brassfield, president; Honorable Jacob Hamm and Wm. E. Cunningham, justices; T. W. Park, clerk, and E. McD. Coffey, sheriff.

"At which said court the following, among other, proceedings were had, to wit:

"Ordered by the court that the payment of coupons No. 1 on bonds of Greene township to the Chicago & Southwestern Railway Company be, and the same hereby —, refused."

Record L, pp. 84,'5.

Be it remembered that at an adjourned term of the county court of Platte county held at Platte City on Monday, the third day of March, 1873, there were present as follows, to wit:

Hon. John S. Brassfield, president; Hon. Jacob Hamm and Wm. E. Cunningham, justices; T. W. Park, clerk; E. McD. Coffer, sheriff.

"At which said court, among others, the following proceedings were had, to wit:

"It is hereby ordered that Stephen C. Woodson, county attorney, be, and he is hereby, required to take such action as may be necessary to collect the taxes paid into the State treasury by the Chicago & Southwestern Railway Company assessed in said county of Platte for the year 1872 and pay the same into the county treasury to the credit of the Green township strip fund, and to this end the said attorney is authorized to proceed at once to Jefferson City and make

demand for said money, and he is also authorized to sign a receipt for and in the name of Platte county for any amount that may be paid him in accordance with the above order."

Book L, page 86.

"Be it remembered that at an adjourned term of the county court of Platte county, Missouri, held at Platte City on Monday, the 24th day of March, 1873, there were present as follows, to wit: Honorable John S. Brassfield, president; Honorable Jacob Hamm and Wm. E. Cunningham, justices; T. W. Park, clerk, and E. McD. Coffey, sheriff.

"At which said court the following, among other, proceedings were had, to wit:

"Now comes James N. Burnes and files motion to instruct the county treasurer to forward to New York a sufficient sum of money to pay the interest falling due April 1st, 1873, upon the bonds of Green township to the Chicago & Southwestern Railroad Company; which motion is continued and set for hearing tomorrow."

Book L, pp. 89, 90.

"And on Tuesday, the 25th day of March, the following, among other, proceedings were had and entered on record, to wit:

"In the matter of the motion of James N. Burnes and the issue of the bonds to the Chicago & Southwestern Railway Company by Platte county for an- on account of the tax-payers within the strip of country on both sides of the road in Green township, it is ordered by the court, no member dissenting, that the treasurer of Platte county at once forward to the American Exchange National bank, in the city of New York, the sum of twenty-five hundred dollars for meet- the interest falling due on said bonds on the first day of April next, and credit the fund paid in on account of the tax on said railway company and now in his hands belonging to said strip or collected from the Chicago, Rock Island & Pacific Railroad Company, in Platte county, for the year 1872.

STATE OF MISSOURI, } ss:
County of Platte, }

I, Jesse J. Blakely, clerk of the county court within and for the county and State aforesaid, do hereby certify that the fore-
40 going is a full, true, and complete transcript of the proceedings in regard to the matter known as the issuance of the Green Township strip bonds, as full as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court. Done at office, in Platte City, Missouri, this the 15th day of February, 1888.

[SEAL.] JESSE J. BLAKELEY,
County Clerk.

The following is a copy of the bonds issued on said subscription:

Know all men by these presents that the county of Platte in the

State of Missouri acknowledges itself to owe and to be indebted to and promises to pay to the bearer the sum of one thousand dollars, on the first day of October one thousand, eight hundred and ninety, for value received at the American Exchange National bank, in the city and State of New York, with interest thereon from the 4th day of October, A. D. 1870, at the rate of ten per cent. per annum until paid, which interest shall be due and payable semi-annually, on the first days of April and October of each year, on presentation of the proper interest coupon as annexed hereto at the American Exchange National bank.

"This is one of fifty bonds of like date and amount and effect numbered from one to fifty, both numbers inclusive, issued in pursuance of an election held by the taxable inhabitants of Camden Point on the 17th day of August, A. D. 1869, and for the payment of which, and the interest thereof, the county court of said county shall, from time to time levy and cause to be collected in the same manner as county tax, a special tax, which shall be levied on the real estate lying within the district so voting.

"In testimony whereof, the said county of Platte, by order of its county court, has caused these presents to be executed by the signatures of the presiding justice of said court, attested by the clerk thereof, with the seal of the county affixed, at his office in Platte City, Platte county, Missouri, this 4th day of October, A. D. 1870.

T. H. TALBOTT,
Presiding Justice.

T. W. PARK, *Clerk.*
[SEAL.] (Vignette)."

41 The coupons are in following form:

"$50. PLATTE CITY, MO., *October* 4, 1870.

The County of Platte, in the State of Missouri,

Promises to pay to bearer fifty dollars, for value received, at the American Exchange National bank, in the city of New York, on the 1st day of April, A. D. 1880, being semi-annual interest on bond No. —, issued to the Chicago & Southwestern Railway Company."

Opinion.

PHILLIPS, *Judge:*

The bonds in questions are predicated of se-tion 7 of an act of the General Assembly of the State of Missouri, approved 4th January, 1860, incorporating the Platte City & Des Moines Railroad Company, which section is as follows:

"Upon the presentation of a petition of the president and directors of said company to the county court of any county through which said road may be located, praying that a vote may be taken in any strip of country through which it may pass, not to exceed ten miles on either side of said road; that the inhabitants thereof are desirous of taking stock in said road and of voting upon themselves a tax for the payment of the same, it shall be the duty of said county

court to order an election therein, and shall prescribe the time, place, and manner of holding said election, and if a majority of the taxable inhabitants shall determine in favor of the tax, it shall be the duty of said court to levy and collect from them a special tax, which shall be kept separate from all other funds and appropriated to no other purposes, and as fast as collected shall cause the same to be paid to the treasurer of said company."

42 It is the settled law of this jurisdiction that the holder of municipal bonds is chargeable with notice of the provisions of the law authorizing their issue. If there was no law authorizing the issue of the bonds the bonds are void, and a purchaser of such instruments is bound to see to it that there is some law consistent with the recitations of the bond pursuant to which it was issued.

The bond in question recites that it was issued "in pursuance of an election by the taxable inhabitants of Camden Point on the 17th day of August, 1869, and for the payment of which and the interest thereon the county court of said county shall, from time to time, levy and cause to be collected, in the same manner as county tax, a special tax, which shall be levied on the real estate lying within the district so voting at such election." This recitation, of course, referred the purchaser to the records and law authorizing the issue of this paper, and the plaintiff has pleaded the acts of the legislature and the action of the county court aforesaid as the basis of his right of action.

It has been expressly decided in Ogdon *vs.* County of Daviess, 102 U. S., 634, that said section 7 of the charter of the railroad did not authorize the county court of Platte county to issue bonds for the payment of any subscription voted by the inhabitants of the "strip of country." The court say:

"The inhabitants were not even organized by themselves, much less made a body politic for any purpose. They could vote tax if called upon to do so by the county court, but that was all. The effect of their vote was nothing more than to authorize the county court to levy, collect, and pay over to the treasurer of the company the special tax they had determined upon. The requirement of the law that the money, when collected, should be paid over to the treasurer of the company, is entirely inconsistent with any

43 idea that the obligations to be met in this way were to be in the form of negotiable paper afloat on the market as commercial securities. Under the provisions of sec. 6 of the charter, counties, towns, and cities were expressly authorized to issue bonds in payment of their subscriptions. The omission of any such power in sect. 7 is conclusive evidence that nothing of the kind was intended in case of "strip" subscriptions. In this particular the case is even stronger than that of Wells *vs.* Supervisors, *supra*, p. 625."

Clearly, therefore, unless these bonds can be referred to some other law for their vindication this action must fail.

Counsel for complainant rely upon two acts of the legislature—one adopted March 23rd, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri." This act authorized the county court to make subscription to the capital stock of rail-

roads and issue bonds therefor on behalf of any municipal township of a county when petitioned therefor and after an election to be held in said township at which two-thirds of the qualified voters should vote for such subscription.

It was also expressly held in Ogden *vs.* County of Daviess, *supra*, that this act related entirely to municipal townships as such, and was no authority for issuing bonds on a subscriptions voted by a mere "strip" of country or for any less subdivision of a county than the municipal townships as they existed under the political subdivision in our State government, but plaintiff contends that by amendatory act of the statute last aforesaid, approved March 24, 1870, the issue of the bonds *were* authorized. This amendment is as follows:

In all cases where by the provisions of the charter of any railroad company organized under the laws of this State the taxable inhabitants of a portion of a municipal township of any county in
44 this State have voted or may hereafter vote to take stock in such railroad company they are hereby declared entitled to and shall have all the privileges, rights, and benefits in said act conferred upon counties or townships, and the county court of such county shall exercise the same powers and perform the same duties in issuing bonds, levying collections, and paying over the taxes which it is required to do in the case of a county or township under the provisions of said act, provided, however, that no part of said township outside the limit of the district voting shall *shall* be taxed to pay any of the bonds or coupons so issued by the county court. This act shall take effect from its passage.

It will be observed that this provision relates to the instance of a vote already had, as well to one that might hereafter be taken, and it is the retroactive feature of this provision that plaintiff invokes and relies upon. For it must be kept in mind that the subscription voted by the tax-payers of the strip was at an election held in 1869 and prior to the adoption of this amendatory statute of March 24, 1870. The contention of plaintiff is that said election was held in a portion of municipal township, and it is sought in argument to construe the decision in Ogden *vs.* County of Daviess, so as to give authority for this *post mortem* legislation. The chief justice, *arguendo*, does say: "It must be presumed that the amendment applied only to parts of townships separately and not to the aggregation of townships or parts of townships, which would necessarily be included in a strip of country twenty miles wide or less along a railroad as it runs through a country. The bonds which this statute authorizes were to be issued on behalf of a portion of a township, not on behalf of a "strip of country." It is to be observed, however, that while the court is reciting what the statutory amendment authorized, it does not say that this statute would authorize the issue of bonds after an election held under the charter of the railroad in question.

45 For the learned chief justice instantly proceeds to state: "Under the charter the taxable inhabitants of the strip were to take the stock and they were to be taxed. We cannot, without a perversion of the language, apply the act of 1870 to this provision

of this statute." Counsel for plaintiff asserts the proposition that this amendatory act of 1870 should be applied in this case as if it were a part of the act of 1869 and in existence at the date of the election held in the strip in 1869, and contends that the legislature could ratify and affirm the ecercise of any power by a municipal corporation, which it could originally confer, and we are referred to the following authorities in support thereof:

Anderson *vs.* Santa Ana, 116 U. S., 356.
Bolles *vs.* Brinfield, 120 U. S., 795.
Jonesborough City *vs.* Cario, etc., R. R. Co., 110 U. S., 192.

These are cases arising on legislative acts in the State of Illinois, in which the principle is announced that "unless there be a constitutional inhibition a legislature has power, when it interferes with no vested right, to enact retrospective statutes, to validate invalid contracts, or to ratify and confirm any act it might lawfully authorize in the first instance." That such statutes enacted subsequent to the occurrence of the act sought to be cured may obtain in some States, whose constitutions do not interdict retrospective legislation, may be conceded to the plaintiff. But the constitution of the State of Missouri, section 28, article I, of the declaration of rights, in force at the time of the issue of these bonds, declares that "no *ex post facto* law, nor law impairing the obligation of contracts or retrospective in its operation, can be passed." The constitution of the State of Illinois contains no such provision as the latter part of the foregoing clause.

46 Under the constitution of Missouri no law retrospective in its opperation can be passed.

What is a retrospective law? "This word," says Bouvier, "is usually applied to those acts of the legislature which are made to operate upon some subject, contract, or crime which existed before the passage of the act, and they are therefore called retrospective laws." "A statute which takes -way or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to the transactions or considerations already past is to be deemed retrospective or retroactive."

Sedgwick, Const. Law, 2 ed., 160.

This provision of the Missouri constitution has been construed and applied by the State supreme court and is entitled to respect and should be followed where a right *in pari materia* again comes under review.

In Fowler *vs.* City of St. Joseph, 37 Mo., 228, certain work was done for the city under an ordinance which provided for the collection of the bills by suit at law. After this work was done the city by a subsequent amendatory ordinance provided that the cost of such improvements should be enforced by a special tax levy and sale. Under this amendatory ordinance the city proceeded by levy and seizure of property to collect the claim. The court held that when the contract was made and the work done the law in force

did not make the amount apportioned to each property-owner a lien on the property, but only created a personal liability enforcible at law. It was, therefore, not competent by subsequent ordinance to create such lien and provide for a different mode of collecting it, because it was retroactive in it- operation.

In Hope Mutual Insurance Co. *vs.* Flynn, 38 Mo., 483, the legislature undertook by amendment to the charter of the company
47 to make the certificates, signed by the president and secretary, attested by the corporate seal, that the party therein named is indebted to the company in the sum named, conclusive evidence of the fact, and made it retroactive as to the causes of action originating anterior thereto.

The court, after quoting the extract above made from Sedgwick, said:

"The right of the legislature to change the remedy and prescribe rules of evidence, if its enactment does not create a new obligation or attach a new disability retrospectively, is conceded; but it is not within the constitutional competency of the legislature to annul by statute any legal ground on which a previous action is founded or to create a new bar by which such action may be defeated. No new ground for the support of an existing action ought to be created by legislative enactment nor any legal bar which goes to deprive a party of his defence."

The case of the City of St. Louis *ex rel. vs.* Clements, 52 Mo., 133, is still more pertinent. The city charter authorized the construction of sewers the dimensions of which were to be prescribed by ordinance of the council. The ordinance passed left the determination of this matter to the city engineer. This was held to be an unauthorized delegation of legislative discretion, and, therefore, no liability under the contract was created against the city. Subsequently the State legislature passed an act authorizing the city to reassess the sum unpaid to the adjacent real estate benefitted by the improvement. This act was held to be unconstitutional for the reason that it was retroactive in its operation.

The court, after quoting from Sedgwick that it is competent for the legislature in given cases to enact laws having a retroactive effect unless it comes within the purview of some express prohibition contained in the State constitution, say:
48 "Here is a positive prohibition against the passage of any law whi-h is retrospective in its operation. There is nothing left for construction. We are only to ascertain what is defined to be a retrospective law and if the law under consideration comes within the definition. The constitution pronounces the judgment. After stating the definition given above by Sedgwick and showing that no legal liability was created against the city, unless by virtue of the after legislative enactment, the court further stated: "How, then, can we say that this act does not create a new right in favor of the contractor and incur a new liability on the part of the defendant. * * * In my mind this law comes exactly within the definition to be given to a retrospective law."

Two of these decisions were made prior to the issuance of the

bonds in question and the other almost contemporaneously with the issue. So that the construction placed upon this clause of the State constitution was established before the bonds went into market.

If the act of March 24th, 1870, at least in so far as it undertook to authorize the county court to issue bonds upon a vote "of a portion of a municipal township," theretofore taken, is not retrospective legislation, it would be difficult to conceive of an act falling within the inhibition of the constitution. At the time the vote was taken by the inhabitants of the strip of country there was no law, says the Supreme Court in Ogden *vs.* Daviess county, *supra*, authorizing the county court of Platt county to issue such bonds predicated of such election. When this subsequent legislation, therefore, is resorted to as authority for their validity it can only be made to apply by giving it a retroactive effect, and the constitution says this cannot be done.

Section 7 of the charter of the railroad company under which the election was held in 1869 did not contemplate the issue
49 of bonds in payment of the debt thus voted. What the tax-payer voted for was that the county court might "levy and collect from them a special tax" to raise the requisite funds to liquidate the debt. They never did vote for the issue of bonds; there was no law in being at the time of the election authorizing or empowering the issue of bonds for such purpose.

As said by Judge Dillon in Gause *vs.* City of Clarksville, 5 Dill., 172: "There is an obvious and essential difference in incurring a debt to be paid in the usual manner out of the revenue of the corporation derived from taxation and the raising the money in advance by a pledge of credit and the issue of coupon bonds payable at a long distant day for sale in the market of the country. The bonds may be issued and sold for sixty-seven per cent. of their par value, and the corporation is bound."

The issue of bonds in question materially altered the condition and rights of the tax-payers from what they were at the time of making the contract for which they voted. The bonds issued bear ten per cent. interest, payable semi-annually at the city of New York, and are not payable until 1890, nearly 20 years after they are issued. By this act of the county court the bonds were not redeemable, however much the tax-payer may have desired to take them up, for twenty years. They must during all these years pay interest thereon semi-annually, at the rate of ten per cent. If this did not make a new contract—create a new liability for the debtor after their vote and in despite of what they voted for—common sense is at fault.

The tax-payers of the so-called strip can well say to the demand of these bondholders: *In hoc foedere non veni.*

Attention is directed by counsel for plaintiff to section 27, art. 4, of the constitution of 1865, which declares that "the General Assembly shall not pass any local or special laws legalizing, except as against the State, the unauthorized or invalid acts of any
50 officer," and also to the enlargement of this provision in the

constitution of 1875, sec. 53, art. IV, which declares that "the General Assembly shall not pass any law legalizing the unauthorized or invalid acts of any officer or agent of the State or of any county or municipal authority."

It may be conceded that the above provision in the constitution of 1865 does not cover the case at bar, and that the constitution of 1875 is prospective in this respect, but these provisions detract naught from the other positive prohibition against the retrospective legislation. These additional limitations but illustrate the fact that it was the purpose of the framers of the fundamental law by particularization to throw every possible safeguard around the constituency against post-mortem legislation, and as far as possible, by going into detail, to prevent both legislative and judicial departments from construing away the plain and obvious scope of other more general declarations. It remains just as true today as it has since the adoption of the constitution of 1820 that no retroactive law can be passed by the legislature which "creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already passed;" and the provisions of said section 53 in the constitution of 1875 has not added one atom of strength to the prohibition. It but emphasizes the popular view of the State policy.

The case of Lynde *vs.* County, 16 Wall., 6, which it is not too much to say carried the doctrine of implied power and agency to the utmost verge, is no authority for the action of the defendant county in issuing these bonds. In that case the power to borrow money to meet the tax voted did exist under certain conditions, and the argument of the majority opinion proceeds upon the presumption
51 that it could not reasonably have been within the contemplation of the legislature or the county court that in providing for the necessary court-house "the erection should be delayed until a sum sufficient to pay for the structure had been realized from the tax authorized to be imposed or that the work should proceed only *pari passu* with the progress of collection from year to year."

Whereas, as already shown, the act of the legislature of 1860 conferred no authority to borrow the money to meet the subscription under any circumstances, and it could not have been in the contemplation of the voters in 1869 that bonds should be issued without authority of law, nor was the county undertaking to build the road so as to raise any implication that it must have been within the intention of the tax-payers or of the county court that the money was to be borrowed to instantly prosecute the work. The railroad company was to build the road, and the tax-payers of the strip merely voted under section 7 to take stock in said road and voted "upon themselves a tax for the payment of the same."

To that "special tax" levied and collected by the court "to be paid to the treasurer of said company" "as fast as collected" could the company alone look to the payment of such subscription.

The case of Dodge *vs.* County of Platte, 82 N. Y., 218, bears out with additional force of reason and authority the foregoing opinion.

There also occurs to me a further objection of minor importance to this action. Under the charter of the railroad company it required "a majority of the taxable inhabitants" to vote for the subscription. The record of the county court only recites that "the taxable inhabitants aforesaid voted in favor of such subscription." It is not recited nor found by the court that the majority of the taxable inhabitants voted therefor, to say nothing of the constitutional
52 provision of the State then in force which required a two-thirds vote of the qualified voters to authorize a subscription made outside of the provisions of the antecedent charter of 1860.

The fact found by the county court does not necessarily imply that the majority of the taxable inhabitants voting at said election so voted.

Does the recitation on the face of the bond cure this defect in the record? It recites that the bond was issued in pursuance of an election by the taxable inhabitants of Camden Point. This might conclude *that* the county court from disputing that an election was had, but the peculiarity in this recitation lies in the fact not only that it fails to state either a majority or a two-thirds vote, but that the election held was "by the taxable inhabitants of Camden Point," whereas the election petitioned for and held was for a part of the municipal township of Greene, lying between given points.

Camden Point, as appears from the face of the record of the county court, was a town in which the election was held." No vote of the inhabitants of Camden Point could have authorized the subscription, and no authority has been shown by the plaintiff for the issue of these bonds other than the election held under section 7 of the charter, which is limited to the taxable inhabitants of the strip of country through which the railroad runs. When plaintiff resorts to the record of the county court to sustain his right he must abide by what he shows.

It is hardly necessary to discuss the proposition advanced by the counsel that the action of the county court has been ratified by any act done by it since the issue of the bonds. "He who may authorize in the beginning may ratify in the end" (First Nat'l Bank *vs.* Gay, 63 Mo., 39). A ratification can only occur when the party ratifying possesses the power to perform the act done. (Marsh *vs.* Fulton County, 10 Wall., 667.

On the facts of this case I declare the law to be that the plaintiff cannot recover. Judgment accordingly.

JOHN F. PHILIPS, *Judge.*

53 And afterwards and within four days after the rendition of said judgment in said cause and on the 3rd day of November, A. D. 1890, the plaintiff filed his motion for a new trial in words and figures as follows, to wit:

UNITED STATES OF AMERICA:

In the Circuit Court, St. Joseph Division, of the Western District of Missouri.

FREDERICK N. DELAND, Plaintiff,
vs.
THE COUNTY OF PLATTE, Defendant.

Comes now the plaintiff and moves the court to set aside its findings and judgment in the above-entitled cause and award the plaintiff a rehearing of said cause for reasons as follows, to wit:

1st. Because the findings and judgments of the court should have been for the plaintiff.

2nd. Because the judgment of the court is against the weight of the testimony.

3rd. Because the findings and judgment of the court are against the law.

4th. Because the findings and judgment of the court are against the evidence.

SANDERS & BOWERS AND
KENDAL B. RANDOLPH,
Att'ys for Plaintiff.

And on said day said motion for a new trial was by the court taken up, seen, heard, and overruled; to which action of the court in overruling the motion for a new trial the plaintiff excepted at the time, and leave was thereupon granted plaintiff to file his bill of exceptions on or before the first day of January, 1891. Plaintiff now, therefore, brings this his bill of exceptions and prays that the same be signed, sealed, and made a part of the record, which
54 is accordingly done this 22nd day of December, 1890.

JNO. F. PHILIPS, [SEAL.]
U. S. Dist. Judge.
SANDERS & BOWERS,
For Plaintiff.
WILLARD P. HALL.
For Defendant.

UNITED STATES OF AMERICA.

WESTERN DISTRICT OF MISSOURI, } *sct:*
St. Joseph Division, }

I, C. M. Thompson, clerk of the United States circuit court for the St. Joseph division of the western district of the State of Missouri, do hereby certify that the foregoing pages contain a full, true, and complete transcript of all the record entries, pleadings filed, and actions had in said court in the case of Frederick N. Deland, plaintiff, *vs.* The County of Platte, defendant, as fully as the same appears of record and on file in my said office, at St. Joseph, Missouri.

Seal U. S. Circuit Court, St. Joseph Div., Western Dist. Mo.

Witness my hand and seal of said court, hereto affixed, at office, in the city of St. Joseph, Missouri, this 20th day of January, A. D. 1891.

C. M. THOMPSON, *Clerk.*

[Endorsed:] F. L. Deland *vs.* County of Platte. Transcript.

Endorsed on cover: Case No. 14,470. W. Missouri C. C. U. S. No. 378. F. N. Deland, appellant, *vs.* The County of Platte. Filed February 2, 1891.

UNITED STATES OF AMERICA.

IN THE

United States Supreme Court.

AT THE

OCTOBER TERM, A. D. 1893.

NO. 378.

FREDERICK N. DELAND,
Plaintiff in Error,
vs.
THE COUNTY OF PLATTE,
Defendant in Error.

Assumpsit.—Damages, $20,000.

BRIEF OF PLAINTIFF IN ERROR.

BY GEORGE A. SANDERS,
OF SANDERS & BOWERS, OF SPRINGFIELD, ILLINOIS.

STATEMENT OF THE CASE.

The records of the County Court of Platte County, Missouri, show an election called by the County Court, on a petition of the President and Directors of the Chicago and Southwestern Railway Company, under Section 7th, of the act of incorporation of the "Platte City and Des Moines Railroad Company," approved March 4th, 1860, and by certain other acts of the General Assembly of the State of Missouri, amendatory thereof; that a vote may be taken in a strip of country through which said railroad may pass, hereinafter mentioned and described, not to exceed ten miles on either side of the said road; that the inhabitants thereof are desirous of taking fifty thousand dollars of the stock of said railroad company, and of voting upon themselves a tax for the payment of the same.

The petition describes the said strip as follows, to-wit:

"All that part of the municipal township of Greene, lying and being east of the range line, between thirty-four and thirty-five; and said railway company agree that said tax shall never be collected or paid, unless said railway is located and constructed so as to run within one mile of the limits of the town of Camden Point."

In accordance with said petition filed July 10, 1869, an election was called by the County Court of said county, for Tuesday, Aug. 17, 1869, to be held at Camden Point, in Greene Township, Platte Co., Mo. The notice of said election gives particulars as to how it shall be held, and appoints judges for holding the same, and the sheriff is ordered to give notice thereof, according to law.

On the 14th of February, 1871, the same County Court recite that an election had been called as above stated for August 17, 1869,

at Camden Point aforesaid; that the taxable inhabitants of said portion of Greene Township, Platte Co., Mo., voted in favor of such subscription, under the act of incorporation of the Platte City and Fort Des Moines Railroad Company, approved January 4, 1860, and by an act of the General Assembly of the State of Missouri entitled, "An act to amend an act entitled 'An act to facilitate the construction of railroads in the State of Missouri,'" approved March 23, 1868, and amended March 24, 1870.

The County Court recites in its Records:

"The Court was authorized to issue bonds in payment of such subscription by the act of March 24, 1870; and in consideration of the order and the vote recited, said railroad company has located, constructed and completed its railway through said strip of territory, and erected and completed a depot therefor within one mile of the town of Camden Point. It is ordered by the Court that fifty bonds of the county, for $1,000 each, be issued and delivered to said railway company, dated October 4, 1870, said bonds to be executed by the Presiding Justice and Clerk thereof, attested by the seal of the county, due twenty years after date at the American Exchange National Bank, in the city of New York, with 40 semi-annual coupons for $50 each for interest accruing thereon, executed and payable in like manner as the bonds; that said bonds and coupons are made and executed for and on behalf of the taxable inhabitants of all that part of the municipal township of Greene, lying east of the range line between thirty-four and thirty-five; that said bonds and coupons shall be paid by the taxable inhabitants exclusively, as provided by law, and none thereof shall ever be a charge on the County of Platte." (See Records of the County in Evidence.) Pp - 6 to 20

The same records show that the County Court levied the necessary taxes, collected them, and paid the semi-annual interest previous

thereto, and for April, 1873. (See Records of County in Evidence.)

This suit is for 240 coupons, for $50.00 each, from bonds thus issued, purchased by the plaintiff, in the open markets for a valuable consideration, for investment, and without any notice of any claimed irregularity, or want of power in the issue of said bonds. Facts admitted by the pleadings.

Said bonds, from which these coupons were taken, are Nos. 7, 17, 18, 19, 20, 24, 25, 26, 27, 31, 35, 46. (For copy of bonds and coupons, see Appendix.)

To the plaintiff's petition, filed as aforesaid, the defendant, by its attorney, filed a demurrer, and assigned thirteen causes for demurrer as follows, to-wit:

1. That the facts stated in said petition are not sufficient to constitute a cause for action against the defendant.

2. That there was no law in the State of Missouri, at the time of the issuing of the bonds and coupons set out in said petition, nor was there ever any law which authorized defendant to issue its obligations upon the votes of the taxable inhabitants of Camden Point.

3. That said petition does not show that Camden Point was, a township, town, city, or village, voting.

4. That the laws referred to in said petition, did not authorize the issue of the instruments of writing sued on.

5. That the Constitution of the State of Missouri forbids the issuing of said instruments by defendant.

6. That the act of March 23, 1868, referred to in said petition, is in conflict with the Constitution of the State of Missouri, and is therefore void and null, and all obligations issued under it are null and void also.

7. That the amendatory act approved March 24, 1870, referred to in said petition, did not authorize the issue of said bonds.

8. That the last mentioned act is unconstitutional, being in conflict with the Constitution of Missouri.

9. That the act of 1870, aforesaid, could not and did not authorize the vote referred to in said petition, and which said petition shows was held on the 17th day of August, 1869.

10. That neither of the acts referred to in said petition, or all of them combined, authorize the issuing of said obligations.

11. That said obligations, and each and every one of them, was issued without authority of law, and that such appears upon the face of said petition.

12. That said petition shows that said obligations, and each and every one of them, was issued in violation of the constitution and laws of the State of Missouri.

13. That the full name of the plaintiff does not appear anywhere in said petition, as required by law in all pleadings.

The first cause assigned for demurrer is, that the facts stated in said petition are not sufficient to constitute a cause of action against the defendant.

As this statement is entirely general, we submit to the Court that the petition of the plaintiff is sufficient, under the law, and all rules of practice, and is within the requirements of the Statute, as found in Vol. 1, Missouri Statutes, Article 5, Sec. 3511, p. 600.

The demurrer filed by the defendant to the petition of the plaintiff was submitted to the Court on written briefs, and overruled by the Court, and withdrawn by the defendant; and the plea of general

denial was filed by the defendant, and on the 8th of April, 1890, the case was submitted to the Court, a jury being waived, in writing, the coupons sued on being offered in evidence, and the following stipulations, including the Records of the County Court of Platte County, Mo., in reference to the issuing of the bonds from which the coupons in controversy were taken, to-wit:

"UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES, ST. JOSEPH DIVISION OF THE WESTERN JUDICIAL DISTRICT, STATE OF MISSOURI.

November Term, A. D. 1889.

Frederick N. Deland *vs.* The County of Platte, Missouri.

ASSUMPSIT. - DAMAGES, $20,000.

STIPULATIONS.

"It is hereby stipulated and mutually agreed upon by the parties to this case, by and through their attorneys, Sanders & Bowers for the plaintiff, and John W. Coots for the defendant, that this cause be submitted to the Court for trial without the intervention of a jury—a jury being specially waived by the parties to this case.

"That the certified copy of the Records of the County Court of Platte County in reference to the calling of the election, the vote held, and the issuing of the bonds and coupons in controversy in this case, signed and certified to under the seal of the Court by Jesse J. Blakely, County Clerk, at his office in Platte City, Mo., February 15, A. D. 1888, and hereto annexed, is a true copy of the records of the defendant, the County of Platte. in all of its acts of record in reference to the preliminary steps as to the election, and the issue of the bonds and coupons in controversy in this case, and the subsequent payment of interest for a time thereon.

"That the copies, in the position, of the bonds and coupons involved in this case are true and correct copies of said bonds and coupons; and that the signatures of the officials purporting to sign the same are the genuine signatures of T. W. Park, then Clerk, and T. H. Talbot, then presiding Justice of the County of Platte, Missouri.

"That the statement heretofore attached on the bonds and coupons involved in this case is correct, and the amount due the plaintiff (if anything) April 10, 1890, is $15,800, and his reasonable costs of suit.

"That this case be submitted to the Court on written briefs. The brief of the plaintiff to be filed with the Clerk of the Court by the 15th day of May, 1890. The brief of the defendant by the 15th day of June, 1890, and the reply brief of the plaintiff by the 1st day of July, 1890.

SANDERS & BOWERS, *Attorneys for Plaintiff.*

J. C. HALL, *Attorney for Defendant.*

NOTE.—Mr. Hall, who signs the above stipulations for the defendant, appeared in the case at the submission of the evidence in the case, for himself and for Mr. Coots, and at Mr. Coots' request,

who was engaged in attending court as prosecuting attorney of Platte County, Mo.

"Copy of Records, Platte County, Missouri, with reference to notice of election and issue of bonds of Platte County, Missouri:

"SATURDAY, JULY 10, 1869.

"Be it remembered, that at the term of the County Court, held at Platte City, Platte County, Missouri, on Saturday, the 10th day of July, 1869, there were present as follows, to-wit: Hon. T. H. Talbott, President; Hons. Jacob Hamm and Benj. R. Morton, Justices of said Court; Geo. W. Belt, Sheriff, and Daniel P. Lewis, Clerk.

Book H, page 206.

STATE OF MISSOURI, } ss. Adjourned Term, 1869.
COUNTY OF PLATTE, }

In the County Court of said county, on the 10th day of July, 1869, the following, among other proceedings, were had, viz:

"Now at this time comes the President and Directors of the Chicago and Southwestern Railway Company, and present their petition, which is in the words and figures following, to-wit:

"*To the Honorable, the County Court of Platte County, Missouri:*

"The undersigned, President and Directors of the Chicago and Southwestern Railway Company, a corporation organized under a special law of the State of Missouri, entitled 'An act to incorporate the Platte City and Fort Des Moines Railroad Company,' approved January 4th, 1860, and by certain other acts of the General Assembly of the State of Missouri amendatory thereof, respectfully make and present to your Honors this their petition, praying the Court, under

the 7th Section of said act, that a vote may be taken in a strip of country through which said railway may pass, hereinafter mentioned and described, the same not exceeding ten miles on either side of said road. That the inhabitants thereof are desirous of taking Fifty Thousand Dollars of the stock in the said Railway Company, and of voting upon themselves a tax for the payment of the same, which said strip is as follows:

"All that part of the municipal Township of Greene, lying and being east of the Range line, between thirty-four and thirty-five, and the said Railway Company hereby agrees that said tax shall never be collected or paid, unless said railway is located and constructed so as to run within one mile of the town of Camden Point.

Respectfully submitted,

F. H. WINSTON, President,
C. A. PERRY,
JAMES N. BURNES,
JAMES L. DAVIS,
H. EDGERTON,
H. M. ALLEN,
BENJAMIN BONIFANT,
N. P. OGDEN,
A. L. PERRIN,
Directors.

"And the County Court being fully advised in the premises, orders and adjudges that the prayer be granted. And it is further ordered that an election in said strip be, and the same is hereby ordered to be held at Camden Point, in Greene Township, in Platte County, Missouri, on Tuesday, August 17th, 1869, and the manner of holding said election shall be as follows: All the taxable inhab-

itants of said territory above described, shall be entitled to vote by ballot, on which shall be written or printed the words or figures—'In favor of and assenting to the tax to secure the location and construction of the Chicago and Southwestern Railway through the strip of land mentioned in petition,' or 'Opposed to and dissenting from the tax to secure the location and construction of the Chicago and Southwestern Railway through the strip of land mentioned in the petition.' And said first mentioned ballots shall be deemed and counted in favor of the tax, and said last mentioned ballots shall be deemed and counted against such tax. It is further ordered that Elliott Miller, James S. Owens and Miles Harrington be, and they are appointed judges of said election, to hold and make return thereof, according to law. And the Sheriff is ordered to give notice thereof according to law.

Book H, page 244.

"MONDAY, SEPTEMBER 27, 1869.

"Court meets pursuant to adjournment. Present, Hon. T. H. Talbott, President; Hons. Jacob Hamm and Benjamin Morton, Justices; George W. Belt, Sheriff; Daniel P. Lewis, Clerk.

"And the following, among the proceedings, were had, to-wit:

"In the matter of the election held at Camden Point, on the 17th day of August, 1869, in pursuance of an order of this Court, made on the 10th day of July, 1869, and the returns of the poll books and ballots, and the certificates of the Judges and Clerks of said election.

"Now at this day came William H. Thomas and W. Stitt, and file their motion to declare the vote taken at said election, a nullity, and of non-effect.

"Be it remembered, that at an adjourned term of the County Court, held at Platte City, Mo., on the 4th day of October, A. D. 1869, there were present as follows, to-wit: Hon. T. H. Talbott, President; Hons. Jacob Hamm and Benjamin R. Morton, Justices of said Court; George W. Belt, Sheriff; Daniel P. Lewis, Clerk.

Book H, page 250.

"And in said Court the following, among other proceedings, were had, to-wit:

"In the matter of the election held at Camden Point, in Greene Township, on the 17th day of August, 1869, in relation to the subscription of $50,000 to the Chicago and Southwestern Railway Company.

"Now at this day come the petitioners for said election, as well as Wm. H. Thomas and Wm. E. Stitt. By their respective attorneys, and the motion of said Thomas and Stitt, filed herein to declare the said election a nullity and of non-effect, being taken up and argued, the same is sustained by the Court. It is therefore considered by the Court, that the vote taken at Camden Point, on the 17th day of August, 1869, in pursuance of an order of this Court, made on the 10th day of July, 1869, be, and the same is declared a nullity, and of non-effect. And it is further ordered and considered by the Court that the said petitioners for said election, pay the costs of this proceeding, and that execution issue therefor.

Book H, page 474.

"Be it remembered that at an adjourned Term of the County Court, held at Platte City, Mo., on the 3d day of October, 1870 there were present as follows, to wit: Hon. Thomas H. Talbott, Presiding Justice of said Court; Hon. Jacob Hamm, Justice of said

Court; George W. Belt, Sheriff; Daniel P. Lewis, Clerk, by Ira Norris, Deputy.

"And in said Court, the following, among other proceedings, were had, to-wit:

"In the matter of the subscription of the texpayers of a 'strip in Greene Township,' made in July, 1869, to the Chicago and Southwestern Railway Company, the motion of the issuance of the bonds by the Court, is now here submitted to the Court, which motion is taken under advisement until Wednesday, the 5th day of October, instant.

Book H, page 476.

"And on Wednesday, the 5th day of October, the following, among other proceedings, were had, to-wit:

"Court met pursuant to adjournment. Present, Hon. T. H. Talbott and Hon. Jacob Hamm and Benj. R. Morton, Justices of said Court, George W. Belt, Sheriff, and Daniel P. Lewis, Clerk.

"In the matter of the motion made to this Court on the third day of October, instant, for the issuance of the bonds of the county, for the amount of the subscription made by the taxpayers within a 'strip in Greene township,' in the month of August, 1869, to the Chicago and Southwestern Railway Company, it is now here ordered that this cause be continued to the next term of this Court.

"Be it remembered, that at an adjourned term of the County Court held at Platte City, Mo., on the 14th day of November, 1870, there were present as follows, to-wit: Present, Hon. T. H. Talbott, President; Hon. Jacob Hamm and Benj. R. Morton, Justices of said Court; George W. Belt, Sheriff, and Daniel P. Lewis, Clerk.

Book H, page 496.

"And at said Court the following, among other proceedings, were had, to-wit:

"In the matter of the motion of Joseph E. Merryman, made to this Court on the third day of October, 1870, for the issuance of the bonds of the county, for the amount of the subscription made by the taxpayers within a 'strip in Greene township, in the month of August, 1869, to the Chicago and Southwestern Railway Company, it is now here ordered by the Court that the motion aforesaid be and the same is overruled by the Court.

Book H, pages 592–593.

"Be it remembered, that at an adjourned term of the County Court of Platte County, held on the 14th day of February, 1871, there were present as follows, to-wit: Hon. T. H. Talbot, Presiding Justice; Hon. John S. Brassfield and Jacob Hamm, Justices; George W. Belt, Sheriff, and T. W. Park, Clerk.

"And in said Court the following, among other proceedings, were had, to-wit:

"Whereas, the Court, on the 10th day of July, A. D. 1869, made an order submitting to a vote of the taxable inhabitants of the 'strip of territory in Platte County hereinafter mentioned and described, a proposition to subscribe for fifty thousand dollars of the capital stock of the Chicago and Southwestern Railway Company; and whereas, at an election held at Camden Point, in said strip, on the 17th day of August, 1869, by virtue of the provisions of an act to incorporate the Platte and Fort DesMoines Railroad Company, approved January 4, 1860, the taxable inhabitants aforesaid voted in favor of such subscription; and whereas, by an act of the General Assembly of the State of Missouri, entitled, 'An act to amend an act entitled an act to facilitate the construction of the railroads in

the State of Missouri,' approved March 23, 1868, approved March 24, 1870, the Court was authorized to issue bonds in payment of such subscription; and whereas, in consideration of the order and vote above recited, said railway company has located, constructed and completed its railway through said strip of territory and erected and completed a depot therefor within one mile of the town of Camden Point; therefore, it is ordered by the Court that fifty bonds of the County, each for one thousand dollars, be issued and delivered to said railway company, dated October 4, 1870, which bonds shall be executed by the Presiding Justice and the Clerk hereof, attested by the seal of the Court, due twenty years after date, at the American Exchange National Bank, in the city of New York, with forty semi-annual coupons, each for fifty dollars for interest accruing thereon, executed and payable in like manner as said bonds. It is further expressly ordered and provided, that the subscription bonds and coupons aforesaid are made and executed for and in behalf of the taxable inhabitants of all that part of the municipal township of Greene, in said County, lying East of the Range line, between thirty-four and thirty-five. And the said bonds and coupons shall be paid by the taxable inhabitants exclusively, as provided by law, and none thereof shall ever be a charge on the County of Platte; and it is further ordered, that the said Chicago and Southwestern Railway Company shall pay all expenses necessary for the transferal of the funds to New York, to pay the interest and bonds aforesaid. And the said Company shall pay the expenses of the execution of the bonds, and all costs attending the same.

Book H, page 594.

"Be it remembered, that at an adjourned term of the County Court of Platte County, Missouri, there were present, as follows, on Friday, the 17th day of February, 1871: Hon. John S. Brassfield and Jacob Hamm, Justices; George W. Belt, Sheriff; T. W. Park, Clerk.

"At which said Court, among others, the following proceedings were had, to-wit:

"Now here comes T. W. Park, Clerk, and files the receipt of James N. Burnes, Vice President of the Chicago and Southwestern Railway Company, for fifty bonds issued in accordance with an order made by this Court, on the 14th day of February, 1871.

Book H, page 668.

"Be it remembered, that at an adjourned term of the County Court, held at Platte City, Platte County, Missouri, on Wednesday, June 14th, 1871, there were present as follows, to-wit: Hon. T. H. Talbott, President: Hons John S. Brassfield and Jacob Hamm, Justices; George W. Belt, Sheriff, and T. W. Park, Clerk.

"At which said Court, the following, among other proceedings, were had, to-wit:

"Ordered by the Court, that the State and County tax be levied on the road-bed, ties, iron track and buildings of the Chicago and Southwestern Railway Company, for the use and benefit of the strip of country, in Greene Township, in Platte County; that wherein the inhabitants voted a subscription of fifty-thousand dollars, to said Railway Company; and when said State and County taxes shall be collected, the same shall be applied to the payment, in the name of Platte County, for said strip, and which said strip is bound to pay; and it is further ordered that said property be and the same is hereby valued at the sum of two hundred and fifty thousand dollars, and that a copy of this order be certified to the collector, and to the proper officer of said company; and it is further ordered that the levy be fixed at the same rate as is now fixed for the State and County purposes.

Book H, page 791.

"Be it remembered, that at an adjourned term of the County Court of Platte County, Missouri, held at Platte City, Mo., on Monday, March 18, 1872, there were present as follow, to-wit: Hon. J. H. Talbott, President; Hons. Jacob Hamm and John S. Brassfield, Justices; T. W. Park, Clerk, and Geo. W. Belt, Sheriff.

"At which Court the following, among other proceedings, were had, to wit:

"In the matter of the subscription made by the taxpayers in the strip in Greene Township, under an order of the County Court, made on the 10th day of July, A. D. 1869.

"Ordered by the Court, that the sum of twenty-five hundred dollars realized out of and by virtue of an order made on the 14th day of June, 1871, be and the same is hereby ordered to be transferred to the American Exchange National Bank, in the City of New York, to pay the interest falling due on said bonds, on the first day of April next, and that J. E. Merryman be appointed agent to settle the matter and report to this Court at the May term. It being understood that the payment is made under the law in relation to subscription of townships, passed March 24th, A. D. 1870.

Book H, page 847.

"Be it remembered, that at an adjourned term of the County Court of Platte County, held at Platte City, Mo., on Tuesday, the 4th day of June, A. D. 1872, there were present as follows, to-wit: Hon. T. H. Talbott, President, and Hons. Jacob Hamm and John S. Brassfield, Justices; T. W. Park, Clerk, and George W. Belt, Sheriff.

"At which Court, among others, the following proceedings were had, to-wit:

"Ordered that a tax of one-half of one per cent. be levied upon every one hundred dollars' valuation of the real and personal property, in the strip of territory voting a subscription of bonds to the Chicago and Southwestern Railroad for the purpose of paying the interest on said bonds, and that the Clerk extend the same upon the tax books for 1872, in appropriate columns.

Book L, page 57.

"Be it remembered, that at an adjourned term of the County Court of Platte County, held at Platte City, Mo., Monday, February 10th, 1873, there were present as follows: Hon. John S. Brassfield, President; Hons. Jacob Hamm and William E. Cunningham, Justices; T. W. Park, Clerk, and E. McD. Coffey, Sheriff.

"At which said Court, the following, among other proceedings, were had, to-wit.

"Ordered by the Court, that the payment of coupons No. 1, on bonds of Greene Township, to the Chicago and Southwestern Railway Company be, and the same is hereby refused.

"Be it remembered, that at an adjourned term of the County Court of Platte County, held at Platte City, Mo., on Monday, the 3d day of March, 1873, there was present as follows, to-wit: Hon. John S. Brassfield, President; Hon. Jacob Hamm and Wm. E. Cunningham, Justices; T. W. Park, Clerk, and E. McD. Coffey, Sheriff,

Record L, page 84–5.

"At which said Court, among others, the following proceedings were had, to-wit:

"It is hereby ordered that Stephen C. Woodson, County Attorney, be, and he is hereby required to take such action as may be necessary to Collect the taxes paid into the State Treasury by the

For the convenience of the Court and attorneys, we give a copy of the records of the County Court of Platte County, Mo, in reference to the election, the vote, and the issue of the bonds and coupons in controversy, and the levy and collection of taxes, to pay the interest for several years, and a copy of the laws granting the power to issue the bonds. (See stipulations in Evidence, and Appendix.)

pp. 2. to 18. 58. to 62

ASSIGNMENT OF ERRORS.

And now comes the plaintiff, by his attorneys, and makes the following assignments of errors, to the special findings of the Court.

1. The Court erred in finding that the election held by the taxable inhabitants of Camden Point on the 17th day of August, 1869, only authorized the County Court to levy and collect a tax sufficient to pay interest on, and the amount voted as a subscription to the railroad company, and did not authorize the issue of bonds and coupons for interest in payment of the amount voted at that time as the subscription to the railroad company.

2. The Court erred in its construction and application of the authority given in reference to such cases as this at bar, of the Act of March 23, 1868, and the Amendatory Act of March 24, 1870, and in the distinction the Court makes between a *township and a portion of a town.*

3. The Court erred in the construction given to Section 28, Article I, of the Constitution of the State of Missouri, as to Retrospective or Curative Laws, and in holding that the Act of March 24, 1870, (added Section 7) to the Act of March 23, 1868, was unconstitutional.

4. The Court erred, in applying the prohibitory powers of the Constitution of Missouri of 1875, to the Constitution of 1865, under which last Constitution these bonds and coupons in question were issued.

5. The Court erred in holding that the records of the County Court, as to the election, were not conclusive. "The Charter," says the Court, "required a majority of the taxable inhabitants" to vote for subscription. The records of the county state that "*the taxable inhabitants aforesaid voted in favor of such subscription.*"

6. The Court erred in holding that there could be no "ratification in this case.

7. The Court erred in giving judgment for costs in favor of the defendant and against the plaintiff.

8. The Court erred in holding *invalid*, the coupons in controversy in this case; and in not giving judgment for the plaintiff, for the amount of his coupons and interest thereon, as claimed in the complaint, and for his costs.

9. The Court erred in finding the issues in favor of the defendant, contrary to the law arising upon the evidence introduced by the plaintiff, and the facts found by the Court.

10. The Court erred in finding the issues against the plaintiff and in not entering judgment in favor of the plaintiff, for the amount of his claim and costs.

11. The Court was, in its rulings and findings in other respects informal, contrary to law, and erroneous.

12. The Court erred in overruling plaintiff's motion for a new trial, for reasons therein stated, and in entering judgment against the plaintiff.

SANDERS & BOWERS,

For Plaintiff.

POINTS AND AUTHORITIES.

There was ample legislative authority for the vote for subscription to the stock of the railroad company, and the payment of the subscription in bonds, issued by the County Court, in the name of the County of Platte, to be paid by taxes levied and collected by said County Court, upon the property of the taxable inhabitants, lying east of the range line, between thirty-four and thirty-five, voting at Camden Point, August 17, 1869, and forming a portion of the municipal township of Greene, in said county.

See Act of incorporation of the railroad company, January 4, 1860.

Act of General Assembly of March 23, 1868.

Amendatory act of the General Assembly of March 24, 1870.

Records of the County Court meeting of February 14, 1871.

Act of the General Assembly amending second section of act of March 23, 1868, laws of February 2, 1871.

Case of *Ogden* v. *County of Daviess*, 102 U. S., 634, distinguished.

CURATIVE ACTS OF THE LEGISLATURE ARE NOT REPUGNANT TO THE CONSTITUTION OF MISSOURI OF 1865.

Constitution of Missouri of 1865, Sec. 27.

THE LEGISLATURE MAY RATIFY AND CONFIRM THE EXERCISE OF ANY POWER IT COULD ORIGINALLY GRANT TO A MUNICIPAL CORPORATION.

Anderson v. *Santa Anna*, 116 U. S, 356–364.

Bolles v. *Brimfield*, 120 Id, 759.

Jonesboro City v. *Cairo et al. R. R. Co.*, 110 Id., 182.

U. S. Mortgage Co. v. *Gross*, 93 Ill., 483–484.

PAYMENT OF INTERRST ON MUNICIPAL BONDS NOT ABSOLUTELY VOID FOR WANT OF POWER TO ISSUE THEM, RATIFIES AND CONFIRMS THE CONTRACT, AND MAKES VALID THE BONDS.

Kirkbride v. *Lafayette Co. Mo.*, 108 U. S., 208.

Johnson v. *Stark Co.*, 24 Ill., 75.

Keithsburg v. *Frick*, 34 Ill., 406.

Hoyt v. *Thompson*, 19 N. Y., 218

Bank of the U. S. v. *Dandridge*, 12 Wheat., 70.

County of Randolph v. *Post*, 93 U. S. 502.

Campbell v. *Kenosha*, 5 Wall., 194.

Supervisors v. *Schenck*, 5 Wall., 728.

Commissioners v. *January*, 10 Otto., 292.

Bissell v. *Railroad*, 22 N. Y., 264; 36 Missouri, 295, 44 Id., 107.

STATEMENTS OF FACTS MADE BY MUNICIPAL OFFICERS WHEN AUTHORIZED BY LAW TO MAKE THEM, ARE FINAL, AND THE MUNICIPALITY FOR WHICH THEY WERE MADE IS ESTOPPED FROM DENYING THE STATEMENTS OF ITS OWN OFFICERS.

Cairo City v. *Zane*, 149 U. S., 122, decided April 22, 1893.

Northwestern Bank v. *Porter Township*, 110 U. S., 608.

Commissioners v. *January*, 94 U. S., 265.

Coloma v. *Eaves*, 92 Id., 484.

Grand Chute v. *Winegar*, 15 Wall, 371.

Dallas v. *McKenzie*, 110 U. S., 686.

Nat. Bank of Syracuse v. *Town of Seneca Falls*, 15 Fed. Rep., 735.

BONDS MAY BE ISSUED IN THE NAME OF THE COUNTY, AND JUDGMENTS RENDERED THEREON TO BE PAID BY A SPECIAL TAX ON THE PROPERTY OF THE TAXABLE INHABITANTS OF THE PRECINCT OR TERRITORY VOTING FOR THEIR ISSUE.

County Commissioners v. *Chandler*, 96 U. S., 205.
County of Cass v. *Johnston*, 95 Id., 360.
Davenport v. *County of Dodge*, 105 Id., 237.
Douglas v. *County of Pike*, 101 Id., 677.
Kirkbride v. *Lafayette Co., Mo.*, 108, Id., 208.
Foote v. *Johnston Co., Mo.*, 6 Fed. Rep., 345.
Westerman v. *Cape Girardeau Co.*, 7 Fed. Rep., 353.
Anderson County v. *Beal*, 113 U. S., 227.
Sherman County v. *Simmons*, Id., 735.

ARGUMENT.

May it Please the Court:

The plea of general denial and the stipulations admit the issue of bonds and coupons, as stated in the petition, but denies that there was any law for their issue. This is the legal effect of the pleadings as they now stand.

The rule is well established that investors in municipal bonds are bound to know that legislative authority existed at the time of their issuance. Having ascertained that the grant for power existed, an innocent holder purchasing these bonds, by the presumption of the law, may rely upon the statements of the officials whose duty it is to execute the legislative power granted to the municipality in the exercise of the power and the issuing of the bonds, that all that legislative authority required to be done has been lawfully accomplished. The statutory enactments must be substantially complied with in the vote and issue of the bonds, and after they have been issued and sold in open markets, they are negotiable securities, and thenceforth are controlled by the rules of law of general jurisprudence that govern negotiable securities.

We submit that in the case at bar the investor, upon a careful examination of the acts of the Legislature under which they were issued, would have found ample power for the vote of the subscription to the stock of the railroad, and from the recitals on the bonds, and the records of the County Court, a full compliance with all the statutory requirements in the issue of the bonds, from which the coupons in controversy have been taken.

The act of incorporation of the Platte City and DesMoines Railroad Company, afterwards changed in name by statute to the Chicago and Southwestern Railway Company, and recognized in the petition for the election, and in the orders of the County Court for the issue of the bonds and in the coupons attached to the bonds, was passed January 4, 1860. (See Appendix, p. 60.)

The statute in Section 7 authorized "Upon the presentation of a petition of the President and Directors of said company to the County Court of any county through which said railroad may be located, praying that a vote may be taken in any strip of country through which it may pass, not to exceed ten miles on either side of said road, that the inhabitants thereof are desirous of taking stock in said road, and of voting upon themselves a tax for the payment of the same, it shall be the duty of said County Court to order an election therein, and shall prescribe the time, place and manner of holding such election, and if a majority of the taxable inhabitants shall determine in favor of the tax, it shall be the duty of said Court to levy and collect from them a special tax, which shall be kept separate from all other funds and appropriated to no other purpose, and as fast as collected shall cause the same to be paid to the treasurer of said company."

Under the authority of this act, the election of August 17, 1869, was called by the County Court, and the proposition to subscribe $50,000 to the stock of the Chicago and Southwestern Railway Company, as stated in the petition, was carried, as required by Section 7 of the Act of January 4, 1860.

There was an absolute and literal compliance with the terms of the act in every respect. (See records as to the call and election.) p-91

Under and by the terms of the above act, the taxable inhabitants of

any strip of country through which the railroad was to pass, not to exceed ten miles on either side of the road, could subscribe on a vote therefore to the stock of the railroad company, through the County Court.

On March 23, 1868, the Legislature passed an act to facilitate the construction of railroads, thereby authorizing MUNICIPAL TOWNSHIPS in any County of Missouri to subscribe, through the County Court of any County, to the stock of railroad companies, with the assent of two thirds of the qualified voters of the township, and to pay their subscriptions, *with bonds in the name of the County*, payable out of the special tax to be levied on the real estate of the township. This act giving townships authority to subscribe and pay for their subscriptions in bonds, issued in the name of the County, and paid by special taxati on, was amended on the 24th day of March, 1870, so as *to include the taxable inhabitants* of A PORTION OF A MUNICIPAL TOWNSHIP. The act of incorporation of January 4, 1860, gave authority *to subscribe* to the taxable inhabitants of any STRIP in any county, etc.

The amendatory act of March 24, 1870, gave authority to subscribe to a "PORTION" *of a municipal township in any County, etc.*

The act of March 24, 1870, added Section 7 to the act of March 23, 1868, as follows:

"In all cases where, by the provisions of the charter of any railroad company, organized under the laws of this State, the taxable inhabitants of a PORTION of a municipal township of any County in this State, HAVE VOTED, or may hereafter vote, to take stock in such railroad company, *they are hereby declared entitled to, and shall have all the privileges, rights and benefits in such act conferred upon Counties or townships*, and the County Court of such County shall exercise the same powers, and perform the same duties in issuing the bonds,

levying, collecting, and paying over the taxes, which it is required to in case of a County or township under the provisions of said act: *Provided, however*, that no part of such township, outside of the limits of the district voting, shall be taxed to pay any of the bonds or coupons so issued by the County Court. This act shall take effect from its passage."

The undoubted intention and effect of this last act was to give A PORTION *of a township* under the law, the same rights, privileges and benefits received by the counties or townships which might vote subscriptions to aid railroads, and in issuing bonds in payment therefor.

Whatever may be said of the power of the taxable inhabitants of A PORTION of Greene township, voting at the election at Camden Point, August 17, 1869, to issue bonds in the name of the County, and through their County Court, in payment of their subscription to the stock of this railroad, voted at that election, *before* this act of March 24, 1870, was passed, there can can be no doubt of it *after* its passage. For this act specially names the *taxable inhabitants of a* PORTION *of a municipal township*, of any County in this State that *have voted* to take stock in such railroad, etc , *are declared entitled to, and shall have all the privileges, rights and benefits in said act, conferred upon Counties or townships, etc.*.

Among these privileges, rights and benefits conferred upon counties and townships, was that of subscribing to the stock of railroads, upon a vote of the taxable inhabitants of the County and townships, and issuing bonds to pay subscriptions *in the name of the County*, through the County Court, and payable out of a special tax to be levied upon the taxable property of the voting inhabitants of the County or township. Here again, in he issue of the bonds from which the coupons in controversy were taken, the statutory require-

ments are literally and fully complied with, the bonds being issued by the County Court, in the name of the County, to be paid by a special tax levied and collected by the County Court, on the taxable inhabitants of a PORTION of Greene township, voting at the election at Camden Point, August 17, 1869, and lying east of the range line, between thirty-four and thirty-five.

It cannot be objected that this act of March 24, 1870, granting full power to issue bonds, was not in existence when the vote for subscription was taken, August 17, 1869. For it is a well settled doctrine that the Legislature can ratify and confirm the exercise of any power; by a municipal corporation, that it could originally confer. The vote, therefore, of August, 17, 1869, for the subscription *to the stock*, was *in haec verba* ratified and confirmed by this act and authority given to issue bonds in payment of the same. The bonds were issued in conformity with this act, as the records show that the act was recited in the order of the County Court for the issue of the bonds. (See Records, p. ——.)

On the power of the Legislature to ratify and confirm the acts of the people by curative acts, see

Anderson v. *Santa Anna*, 116 U. S., 356–364.
Bolles v. *Brimfield*, 120 Id., 759.
Jonesboro City v. *Cairo, etc. R. R.*, 110 Id., 192.
U. S. Mortgage Co. v. *Gross*, 93 Ill., 483–484.

Nor was there any constitutional objection at that time. The Constitution of 1875, which made changes in restricting legislative powers, was not then in existence, and can have no possible bearing or connection with the rules of law that must govern in this case. They were issued under the Constitution of 1865, and its provisions must control in this case. No rule of law is better settled than that

the contract in negotiable securities must be construed under the laws and judicial decisions in existence when it was made. Citations would be superfluous.

In the limitations placed upon the legislative power in the Constitution of 1865, in civil actions, is the following: "The General Assembly shall not pass *any local or special law, legalizing, except as against the state, the unauthorized or invalid acts of any officer.*" This is the only limitation restricting legislative power in civil actions, that in any way, whatever, bears on the question involved in the case at bar. And it will be seen at once that the language refers entirely to *State officers*, and cannot by any implication or fair construction, refer to municipal officials, for they are not State officers, as are here understood.

The *present* Constitution of Missouri reads differently, and in many respects has limited the powers of the General assembly. The above quoted section of the Constitution of 1865, reads as follows in the Constitution of 1875:

"Section 53. *The General Assembly shall not pass any local or special law * * * legalizing the unauthorized or invalid acts of any officer or agent of the State, or of any County or municipality thereof.*"

It will be seen that these constitutional limitations of legislative powers are entirely different in these two Constitutions. That of 1865 refers *entirely and only to State Officials*; and that of 1875 *includes municipal officials.*

The Legislature had an unquestioned right to pass curative acts under the Constitution of Missouri of 1865, and to ratify and confirm the exercise of any power it could originally grant to the people. (See citations above.) In this case *it did ratify and confirm in the act*

of March 24, 1870, the acts of taxable inhabitants of a portion of Greene Township in the vote of August 17, 1869, for the subscription to the stock of the railroad company, and authorized them to pay that subscription in bonds, the same as townships and counties in the State.

Then, again, in no sense can the act of March 24, 1870, be considered a "*local*" or "*special act.*" It was general from its terms and application. It applied to EVERY TOWNSHIP *in the State—a portion of* whose taxable inhabitants desired to subscribe to railroads passing through their territory, and was special in no singular point of application.

The vote for subscription was the contract on the part of the electors, and the issuing of the bonds the formal execution of it—the bonds being the mere evidence of the debt so contracted by the voters, and which the County Court had full authority to issue under the act of March 24, 1870, as agents of the voters, without any further vote of the electors. They could have restrained the County Court had they so desired. No mannal subscription is necessary if the railroad accept it.

County of Moultrie v. *Rockingham Savings Bank*, 92 U. S., 31.

County of Cass v. *Gillett*, 100 U. S., 586.

Bates County v. *Winters*, 112 Id., 355.

Nugent v. *Supervisors*, 19 Wall., 241.

The authority of law, or statutory enactments for the issue of the bonds is, we think, most ample, and that every requirement of the legislative acts has been fully met and complied with in their issue.

THE CASE OF OGDEN V. COUNTY OF DAVIESS, 102 U. S. 634, DISTINGUISHED FROM THE CASE AT BAR.

The *Ogden* v. *County of Daviess* case arose on an issue of bonds

under the *same laws*, IN PART, (that of January 4, 1860), as the case at bar, but *under a different state of facts*, and to a great extent, of law. In that case the Court held the bonds void, for the reason that there was *no legislative power for their issue*. In this case the power is most ample, as we have already shown.

The act of incorporation of the railroad company of January 4, 1860, under which the bonds in *Ogden* v. *Daviess case* were issued, and *the only act* under which they could, under any possible pretext be issued, grants authority to the County Court to subscribe to the stock of railroads, and issue bonds to pay for the same on petition of the President and Directors of the railroad, and on a majority vote of the taxable inhabitants in favor of a subscription to the stock and levy a tax to pay the same "IN ANY STRIP OF COUNTRY THROUGH WHICH THE RAILROAD MIGHT PASS, NOT TO EXCEED TEN MILES ON EITHER SIDE OF THE ROAD." (See Appendix, P 6 1.)

The reasoning of the court in that case is, that there was in such a "strip" no municipal or territorial organization of the taxable inhabitants, or body politic, as could admit of the issue of bonds in payment of a subscription to the stock under any then existing laws. That "a strip" not exceeding ten miles on either side of the railroad, was not necessarily a *portion* of a township. *It might include parts of several townships, or the whole of some and parts of others.* "Yet, even in that case, the Court held that the affirmative vote of the inhabitants of such a 'strip' authorized the County Court *to levy and collect and pay over to the treasury of the company such special taxes* (as had been voted) *but did not create a debt of the County as such*, for which bonds might issue, under the act of March 23, 1868, authorizing counties, cities and incorporated towns to fund their debts."

That the Act of March 23, 1868, granted no new powers to

counties, cities or towns in reference to subscription and the issue of bonds, and that the Act of March 24, 1870, *referred entirely to parts of townships separately, and not to aggregations of townships or parts of townships.*

Supra, 635.

The Court further say, page 639.

"As the Act amended (March 24, 1870) *related entirely to municipal townships as such*, and there had before been legislation in relation to *strips of country* without reference to *townships*, it must be presumed that the amendment applied only to PARTS OF TOWNSHIPS SEPARATELY, and not to the aggregation of townships or parts of townships, which would almost necessarily be included in a strip of country twenty miles wide, or less, along a railroad as it runs through a County. *The bonds which this statute* (March 24, 1870) *authorizes were to be issued on behalf* OF A PORTION OF A TOWNSHIP, and not on behalf of a 'strip' of country."

The last statement of the Court, above quoted, covers the case at bar *in every particular*, and instead of militating against the bonds and coupons in the case at bar, ACTUALLY SUPPORTS THEM AS VALID, SO FAR AS AUTHORITY OF LAW IT CONCERNED, *as if the Court had been considering this very issue of bonds.*

The remainder of that decision has no reference to the case at bar, *because the facts are different, and is not applicable to this case. The case at bar is strongly and directly supported by that decision on every point of law and fact where it is applicable. It is brought within the very letter of the Act of March 24, 1870*, and the United States Supreme Court say, in *Ogden* v. *Daviess*, *supra*, that "that Act authorized bonds to be issued on behalf of a PORTION OF A TOWNSHIP," and SUCH ARE THE BONDS IN THE CASE AT BAR.

As to the question of the power of the County Court to issue bonds *in the name of the County* for the Counties, cities and towns, and a PORTION of a township, under the legislative acts which have voted subscriptions to aid railroad companies, it has already been decided by the United States Supreme Court in many cases.

In the case of the *County of Cass* v. *Johnson*, 95 U. S., 360, the Court held an issue of bonds by *Camp Branch Township* under the act of March 23, 1868, valid. The case was, as to the form of the bond, very analogous to the case at bar.

In that case the United States Supreme Court say, page 369:

"It is finally objected, that, as the bonds are, in fact, the bonds of the township, no action can be maintained upon them against the county.

"Without undertaking to decide what would be the appropriate form of proceeding to enforce the obligation in the State Courts, it is sufficient to say that in the Courts of the United States we are entirely satisfied with the conclusions of the Court below, and *that a judgment may be rendered against the County, to be enforced*, if necessary, by *mandamus* against the County Court, or the Judges thereof, to compel the levy and collection of a tax in accordance with the provisions of the law under which the bonds were issued."

In *Davenport* v. *County of Dodge*, 105 U. S., 237, this question was fully discussed. In that case the bonds were issued by "*Fremont Precinct*," in the County of Dodge, Nebraska, under a law almost identical with that under which the bonds in the case at bar were issued. The Court held "*that to enforce payment the holders must sue the County, and judgment, if rendered in his favor, will be in form against it, and be collected by tax upon the taxable property of the precinct.*"

"If aid is voted by a precinct, bonds are also to be issued, differing only from County bonds in that they are to be paid from taxes levied on the property within the precinct. The management of this sort of precinct indebtedness is made to conform to that of counties of like character. The sole distinction is that it concerns a distinct portion only, instead of the whole body of the County."

Page 240, *supra.*

Agaain, on page 241, the Court say:

"Having no corporate existence, no separate municipal authority, they cannot," says the Supreme Court of the State, in the case last cited, 'enter into contracts, directly or indirectly, nor assume obligations which a Court might be called on to enforce. Hence, the precinct cannot become the obligor of precinct bonds, and we think it follows that the County, which does have a corporate existence, and can contract and be contracted with, and upon whose officers is imposed the duty, not only of issuing the bonds, but of providing for the payment of them, *is the political entity*, bound by the legislation and charged with the debt created thereby. The only difference between the two kinds of debts is, that in one all the taxable property of the County is charged with its payment, and in the other only a part.' * * We think, therefore, that the special bonds which the County Commissioners are to issue for the precinct are, *in legal effect, the special bonds of the County, payable out of a special fund to be raised in a special way.*"

The Court further say, p. 242, *supra*:

"If there is noting else in the case, therefore we think it comes within the *County of Cass* v. *Johnston, supra, and that an action at law will lie in the courts of the United States, against the county for the recovery of the special judgment asked for.*"

County Commissioners v. *Chandler*, 96 U. S., 205.

Again, in *Douglas* v. *County of Pike*, 101, U. S. 677, the Court held bonds issued by an order of the County Court, in the name of Pike County, Mo., *valid*, under the act of March 23, 1868, and on a vote of the people of Cuivre Township, in that County, in a very exhaustive opinion, and adhering to and confirming the doctrines laid down in the *County of Cass* v. *Johnston*, 95 U. S, 360.

Kirkbride v. *Lafayette County, Mo.*, 108 U. S., 208.
Foote v. *Johnston County, Mo.*, 6 Fed. Rep., 345.
Westerman v. *Cape Girardeau County, Mo.*, 7 Fed. Rep., 353.

THESE BONDS ARE NOT UNCONSTITUTIONAL.

The acts granting the power to subscribe to the stock of the Chicago and Southwestern Railway Company, and the issue of bonds to pay for the same in the name of the County, and by the order of the County Court, on a vote of the taxable inhabitants who are to pay the bonds by a tax on the property of the voting district, are not repugnaut to the Constitution of the State of Missouri, of 1865.

At the time of the issue of the bonds and coupons involved in this suit, and for a long time thereafter, the State Court of Missouri held these laws constitutional, but in the cases of *State ex rel. Woodson* v. *Brassfield*, 67 Mo., 231, and *Webb* v. *Lafayette County*, Id., 353, the State Supreme Court of Missouri held the "Township Aid Act," that of March 23, 1868, unconstitutional, *for the first time.* Before these decisions, the United States Supreme Court, at the October term, 1877, in the case of *County of Cass* v. *Johnston*, 95, U. S., 360, in a very exhaustive opinion, reviewing the State Supreme Court of Missouri decisions on the question up to that time, held the

act of March 23, 1868, *constitutional*, and again, in the *County of Cass* v. *Johnston*, 95 U. S., 373.

Again, *after the decisions of the State Supreme court of Missouri, supra, at the October term, 1879, the United States Supreme court,* in *Douglas* v. *County of Pike*, 101 U. S., 677, in a very long and careful review of all the cases of the State Supreme Court, adhere to and confirm the opinion in *County of Cass* v. *Johnston*, *supra*, and held the act *constitutional.*

This was the case of the bonds issued by Pike County, Missouri, under the act of March 23, 1868, and on a vote of the people of Cuivre Township, taken as required by the act of February 2, 1871.

In *Douglas* v. *County of Pike*, *supra*, the Court say:

"Where municipal bonds have been put upon the market as commercial paper, the rights of the parties thereto are to be determined according to the statutes of the State as they *were then construed by her highest courts, and in a case involving these rights, this court will not be governed by any subsequent decision in conflict with that under which they accrued.*"

"The settled judicial construction of the statute, so far as the contract rights thereunder were acquired, is as much a part of the statute as the text itself, and a change of decision is the same in its effect on pre-existing contracts as a repeal or an amendment by legislative enactment."

This rule is too well known and applied to need citations.

The decisions of the State Supreme court, *supra*, were rendered, the *last cited* in 1876, and those of the United States Supreme Court, between October, 1877 and 1879, and these bonds in issue in the case at bar, were dated October 4, 1870, so that under the above citations

from the United States Supreme Court, the decisions of the State Supreme Court could have no possible effect on the bonds involved in the case at bar, even if they had not been overruled by the United States Supreme Court.

Westerman v. *Cape Girardeau County, Mo.*, 7 Fed. Rep., 353.

Foote v. *Johnston County, Mo.*, 6 Fed. Rep., 345.

Kirkbride v. *Lafayette County, Mo.*, 108 U. S. 208.

The United States Supreme Court, in the case of the *County of Cass* v. *Johnston*, 95 U. S., 365, decided at the October term, 1877, a case in which the bonds were issued under the "*Township Aid Act*," of March 23, 1868, where the constitutionality of this act is fully considered, says:

"The Supreme Court of Missouri *has often been called upon to construe and give effect to this statute, and* HAS NEVER, IN A SINGLE INSTANCE, EXPRESSED A DOUBT AS TO ITS VALIDITY. The first case was that of the *State* v. *Linn County*, 44 Mo., 504, decided in 1869, the year after the law was passed. That was an application for a *mandamus* to compel the County Court to issue bonds upon the subscription made pursuant to a vote under the law, and it was contended that the Act was repugnant to Article 11, Section 14, of the Constitution, because the bonds to be issued were the bonds of the County, and not of the Township, and the voters of the County had not given their assent, but *the Court held that the bonds of the Township were the bonds of the County, and granted the writ.*"

Following this are the cases of—

Ranney v. *Beeder*, 50 Mo., 600.

McPike v. *Penn*, 51 Id., 63, decided in 1872.

State v. *Cunningham*, 51 Id., 479.

Rubey v. *Shain*, 54 Id , 207, decided in 1873.

State v. *Clarkson*, 59 Id., 149, decided in 1875.

State v. *Daviess County*, 64 Id., 31.

State v. *Cooper County*, Id., 170, decided in 1876.

In all of which the Act was in some form brought under consideration, and IN NO ONE WAS THERE A SUGGESTION OF ITS UNCONSTITUTIONALITY, BY EITHER COURT OR COUNSEL.

Here there *are* SEVEN CASES *involving the constitutionality of this Act*, passed upon by the State Supreme Court of Missouri, *during six years after the bonds and coupons in controversy were issued and the constitutionality of the Act affirmed in* EVERY CASE, ACCORDING TO THE OPINION OF THE UNITED STATES SUPREME COURT, THE HIGHEST AND LAST TRIBUNAL FOR APPEAL AND DECISIONS IN THE LAND.

Again, at the October term, 1879, *two years later*, the United States Court is asked to review its decisions on this question, and does so in *Douglass* v. *County of Pike*, 101 U. S., 677.

After an exhaustive review of the whole question, the Court adheres to and affirms its decision in the *County of Cass* v. *Johnston*, 95 U. S., 365. That Court also decided at the same term (see 101 U. S., p. 688, note) the cases of *Darlington* v. *County of Jackson; Foote* v. *County of Pike*, and affirmed its decision in the case of *Douglass* v. *County of Pike, supra*.

The bonds in the case at bar were voted August 17, 1869, and dated October 4, 1870. Even the State Supreme Court of Missouri, AT THAT TIME, *and for more than* SIX YEARS THEREAFTER *at least, held this act constitutional.*

In *Douglass* v. *County of Pike*, 101 U. S., 687, decided October term, 1879, NINE YEARS *after* these bonds in controversy were issued, the Court say:

"SO FAR AS THIS CASE IS CONCERNED, WE HAVE NO HESITATION IN SAYING THAT THE RIGHTS OF THE PARTIES ARE TO BE DETERMINED ACCORDING TO THE LAW, AS IT WAS JUDICIALLY CONSTRUED TO BE, WHEN THE BONDS IN QUESTION WERE PUT ON THE MARKET, AS COMMERCIAL PAPER."

Beyond a doubt, therefore, the act of March 23, 1868, is constitutional, from the decisions of the State Supreme Court, and the United States Supreme Court. The only remaining question on this point is, was the amendment to this act approved March 24, 1870, in conflict with the Constitution of the State of Missouri?

This question has been answered by the United States Supreme Court, in the case of *Ogden* v. *Daviess*, 102 U. S., 638, at the October term, 1880.

There the United States Supreme Court say:

"WITHOUT DOUBT section 7 of the charter of the company, *authorized* the taxable inhabitants of the strip of country, designated to vote a tax upon themselves to take stock, and require the County Court to levy and collect such tax, if voted, and pay over the money as fast as collected to the treasurer of the company."

Here section 7 of the act of Incorporation of January 4, 1860. is held conititutional, and under it the County Court had power to levy and collect, and pay to the treasurer of the company the taxes voted by the taxable inhabitants of the district so voting; but the bonds involved in that case were held void, because the inhabitants of the territory voting on them did not come within the territory described in any laws then in existence, that could, under such laws, make a municipal bond.

Again, in the same case, p. 639, the Court say, in reference to the act of March 24, 1870:

"That was an act amending what is commonly known as the 'Township Aid Law' of Missouri, which, related ONLY to subscriptions by municipal townships. The amendment granted *no new power of subscription*, but simply provided that where, under the charter of any railroad company, the taxable inhabitants of A PORTION of a municipal township HAD VOTED, OR MIGHT VOTE *to take stock in the company, the County Court* MIGHT ISSUE BONDS FOR THE STOCK SO TAKEN, TO BE PAID OUT OF THE TAXES LEVIED ON PROPERTY WITHIN THE LIMITS OF THE DISTRICT SO VOTING."

THIS STRONG LANGUAGE OF THE COURT UNDOUBTEDLY AFFIRMS THE CONSTITUTIONALITY OF THE ACT OF MARCH 24, 1870.

That Act (see Appendix) authorized the County Courts to issue bonds FOR A PORTION OF A TOWNSHIP WHICH HAD VOTED, or *should vote*, to subscribe stock to railroads, under a vote of the electors therefor, under the Incorporating Act of January 4, 1860.

NONE OF THESE ACTS ARE, THEREFORE, UNCONSTITUTIONAL, ACCORDING TO THE DECISIONS OF THE HIGHEST STATE AND FEDERAL COURTS. They also give ample power for the vote for subscription to the stock of the Railroad Company, and the payment of the same by bonds, issued in the name of the County by the Court of the County in which the voting district is located, to be paid by a special tax levied and collected by the County Court, on the property of the taxable inhabitants of the voting district.

These bonds are not unconstitutional as being repugnant to Section 14, Article 11, of the Constitution of Missouri of 1865, as counsel contend: That Article says:

"The General Assembly shall not authorize any *city, county or town*, to become stockholder in, or loan its credit to any company, association or corporation, unless two-thirds of the qualified voters

of such County, City or Town, at a regular or special election to be held therein, shall assent thereto." * * *

This Section cannot be construed as applicable to the case at bar, because "*a portion of a township*" is not mentioned in the language of the above section of the article, and for the reason that *the vote* for the subscription was taken *under the act of incorporation of the railroad company of January 4, 1860, and the bonds issued in payment thereof under the Act of March 24, 1870.*

This Act is as follows:

In ALL CASES WHEREBY *the provisions of the charter of any railroad company* organized under the laws of this State, the taxable inhabitants of a portion of a municipal township of any County *have voted* or *may hereafter vote*, to take stock in such railroad company, they are hereby declared entitled to, and shall have all the privileges, rights and benefits *in said act* conferred upon counties or townships, and the County Court shall exercise the same powers, and perform the same duties *in issuing bonds*, levying, collecting and paying over the taxes which it is required to in the case of *a County* or *Township* under the provisions of said Act."

This Act *adds nothing to the powers to subscribe stock and issue bonds to pay the same*, granted in the Act of March 23, 1868; it only amends that Act by *extending these powers to a "portion of a municipal township"* and places *a "portion of a township"* on the same plane as *the Township* and *the County in the enjoyment of the benefits of the law of 1868.* Therefore, if the Act of March 24, 1868, is not repugnant to the Constitution of 1865, the act amendatory is not, as no new powers are granted by the Act of March 24, 1870. Only the application of the powers granted in Act of March 23, 1868, *are extended to a portion* of a municipal township by the Act of 1870.

But we are happily left in no doubt as to the constitutionality of either of the Acts of 1868, or the amendments of 1870, by the decisions of the Supreme Court of Missouri, and of the United States Supreme Court.

County of Cass v. Johnston, 95 U. S., 360, and State Court decisions, cited and reviewed decided in 1877.

County of Cass v. Jordan, 95 U. S., 373.

Douglass v. County of Pike, 101 U. S., 677, and citations decided 1879, on review of all the cases.

The above cases settle the question of the constitutionality of these Acts beyond doubt, and the United States Supreme Court, in case of *Ogden* v. *Daviess County*, 102 U. S., 639 and 640, in construing the Amendatory Act of 1870, undoubtedly means to be understood as holding it constitutional.

Under the pleadings and evidence there can be no question raised as to the legality of the election and the issue of the bonds and coupons in controversy. The only question in the case is, *was there authority of law for the issue of the bonds from which the coupons in controversy were taken?*

HAVING SHOWN AUTHORITY OF LAW FOR THEIR ISSUE, THESE BONDS WERE RATIFIED AND CONFIRMED BY THE PAYMENT OF THE INTEREST.

Having shown that there was ample authority by law for the issue of these Platte County bonds, the levy of taxes and the payment of the interest for a time, ratifies and confirms the contract made in the bonds.

In the case at bar, there was a levy made by the County Court, and taxes collected in whole, or in part, for the interest for three years. (See Records, p[illegible])

Kirkbride v. *Lafayette County, Mo.*, 108. U. S., 208.

"One or more bonds may be issued and exchanged by the County, and if their issuance is subsequently recognized by the action of the County, it will be held to be a ratification."

Johnston v. *Stark County*, 24 Ill., 75.

Again, in the above case, the Court say:

"By holding it, they acknowledge the legality of the issue of these bonds."

Again, "they have at two elections cast the vote for Directors of this road, which the stock received for the bonds entitled the County to give; they also, by order of their Board of Supervisors, *have paid two annual installments of interest, falling due upon these bonds*, and took up and destroyed the coupons therefor." * * *

"These acts unexplained, are *as satisfactory evidences of design to ratify the issue of these bonds, as if it had been done by an order of the Board of Supervisors.*"

In *Keithsburg* v. *Frick*, 34 Ill., 406, the Court say:

"That whether the bonds were issued by virtue of the 2d or 17th section of the act of 1857, the corporation was estopped from setting up any irregularity in their issue, inasmuch as it had *repeatedly* recognized their validity, by paying them out, levying taxes, and paying *interest for a series of years.*

"Like an individual, a corporation may ratify the acts of its agents, done in excess of authority, and such ratification may, in many cases, be inferred from acquiescence in these acts, as well as by express adoption."

Hoyt v. *Thompson*, 19 New York, 218.

It has been held that this principle is as applicable to a corporation as to an individual.

Peterson v. *The Mayor of New York*, 17 New York, 453.

"The officers of the corporation openly exercising powers affecting the interests of third persons, which presupposes a delegated authority for the purpose, and other corporate acts, must, have contemplated the legal existence of such authority; the acts of such officers will be deemed rightful and the delegated authority will be presumed."

Bank of the United States v. *Dandridge*, 12 Wheat., 70.
County of Randolph v. *Post* 93 U. S., 502.
Campbell v. *Kenosha*, 5 Wall., 194.

In *Supervisors* v. *Schenck*, 5 Wall., 728, the United States Supreme Court say:

"All the acts of the Board of Supervisors of the County, in making up subscriptions, purchasing the shares, issuing the bonds, exchanging securities, appear to have been open and well known to the corporation, and yet they constantly suffered themselves to be represented in the choice and management of all the affairs of the Railroad Company, and voluntarily voted taxes for the payment of the yearly interest on the bonds, and actually paid the same, as admitted in the special plea. Examined in the light of these suggestions, it would be difficult to imagine a case where the rule that a subsequent ratification is as good as a previous authority, can be more justly applicable than the case under consideration."

Miles v. *Gleason*, 11 Wis., 490.
Angell & Ames on Corp's, 8th ed., Secs. 237, 304.
Bissell v. *Railroad*, 22 N. Y., 264.

Again, "whether the commissioners of the defendant complied with the statutory requirements in issuing the bonds or not, the defendant *ratified their act by paying interest for six or seven years* upon its bonds, and retaining the stock of the Railroad company received in exchange for the bonds."

First National Bank of Oswego v. *Town of Wolcott*, 7 Fed. Rep., 892.

The Town of Ontario, v. *Irwin*, 3 Fed. Rep. 517.

Whiting v. *Town of Potter*, 3 Fed. Rep., 517.

Pendleton v. *Amy*, 13 Wall., 297.

Commissioners v. *January*, 10 Otto., 292.

And where "a County, acting under an authority it supposed to to be valid, subscribed in good faith, stock to a railroad company, and *for a series of years paid the interest on its bonds and voted its stock*, such a County is estopped from disputing the validity of such bonds in the hands of innocent purchasers."

36 Missouri, 295.

44 Id., 107.

This doctrine of ratification is important in the case at bar, for we have shown from State and Federal decisions, that in cases of the issue of bonds like these, which on delivery becomes negotiable securities, the repeated acts of authorized officials, in levying and collecting taxes, and paying the interest on the bonds, estops the corporation from denying power to issue the bonds when actual or supposed legislative authority existed, and they are in the hands of innocent purchasers, as in this case.

HAVING SHOWN THAT THERE WAS LEGISLATIVE POWER FOR THE VOTE AND THE SUBSCRIPTION TO THE STOCK AND THE ISSUING OF THE BONDS IN THIS CASE, THE STATEMENTS OF THE COUNTY COURT AS TO THE EXERCISE OF THE POWER ARE A FINALITY, AND CONCLUSIVE AS TO THEIR VALIDITY IN THE HANDS OF A BONA FIDE PURCHASER AND HOLDER OF THE BONDS.

In this case the County Court was made by law the board to carry into effect the will of the taxable inhabitants of that portion of Greene township voting August 17, 1869, at Camden Point, in the matter of calling and holding an election subscribing for the stock and issuing bonds in payment therefor, and levying, collecting taxes and paying the interest thereon.

The rule is that the decision of such a board, whose duty it is by virtue of the office they hold, or by designation in the legislative act, as in this case, is final as to all matters they are so authorized to determine. It matters not whether the decisions be in the recitals on the bonds themselves or by orders and statements made of record, open to the inspection of all interested in the municipality. For, if the investor must know that there is legislative authority for the issue of his bonds, he certainly has a right to examine and know of all records, the statements of the officials who are designated to execute the granted power in the election and issue of the bonds; and such statements and decisions of such officials or board have, in law, all the force of a recital on the bond of the same facts determined, and are competent evidence, and the municipality is estopped from denying them.

The United States Supreme Court, in the *Northwestern Bank* v. *Porter Township*, 110 U. S., 603, say:

"The facts which a municipal corporation issuing bonds in aid of a railroad is not permitted, against a *bona fide* holder to question,

in the face of a recital on the bonds of their existence, are those connected with, or growing out of, the discharge of ordinary duties of such of its officers as were invested with authority to execute them, and which the statutes conferring the power made it their duty to ascertain, and determine before the bonds were issued."

This doctrine is well stated in the above case, and it is the rule in the Federal Courts.

Town of Coloma v. *Eaves*, 92 U. S., 484.
Buchanan v. *Litchfield*, 102 Id., 278.
Bissell v. *The City of Jefferson*, 24 How., 278.
Anthony v. *Jasper County*, 101 U. S., 693–697.
Town of Venice v. *Murdock*, 92 Id., 494.
Town of Rock Creek v. *Strong*, 96 Id., 271.
San Antonio v. *Mahaffy*, 96 Id., 312.
Cairo City v. *Zane*, 149 U. S., 122, decided April 22, 1893.

In the case at bar, the county officials represent the taxable inhabitants of that portion of Greene township voting at the election of August 17, 1869, at Camden Point, and *were named by the acts of the Legislature* to call the election, announce its results, subscribe for the stock, issue the bonds, and levy, collect, and pay over the special tax authorized by said acts, in payment of the interest and principal of the bonds, and to determine whether all the conditions precedent under the acts of the Legislature had been complied with before the issue of the bonds.

THEY DID DECIDE ALL THESE QUESTIONS, *and the issuance of the bonds was, in law, their decision, and it is conclusive and binding on the taxable inhabitants voting in that portion of Greene township August 17, 1869.*

In *Commissioners* v. *January*, 94 U. S., 265, the Court say:

"This act authorized the Commissioners to issue bonds when the requirements of the law had been complied with. *They were thus constituted a tribunal for the adjustment of all questions touching the subject. They were clothed with the power and charged with the duty to decide them.* No appeal was provided for. The issuing of the bonds was the reflex and embodiment of their judgment, that it was proper to do so. It implies a prior determination to that effect. *The fact carries with it this presumption.* The bonds recite that they were issued in conformity to the law, and in pursuance of the election of April 16, 1869.

"The acts of the Commissioners were the acts of the County, and the County is conclusively bound by what they have done. As between the County and a *bona fide* holder. NO QUESTION INVOLVING THE INFIRMITY *of the securities can be raised.* The principle of estoppel applies and precludes the obligor from interposing such defense. Taking and holding the certificate of stock, issuing and delivering the bonds, paying the interest for a time, cured the defect as to the order for an election, if any existed. *Under the circumstances* a *bona fide* taker had a right to presume that EVERYTHING HAD BEEN PROPERLY DONE, WHICH WAS NECESSARY TO THE VALIDITY OF THE BONDS."

In the above case especial attention is called to the closing part of the opinion in the case of *Pine Grove* v. *Talcott*, 19 Wall., 666.

City of Lexington v. *Butler*, 14 Wall.. 283.
Pendleton v. *Amy*, 13 Wall., 298.
Lynde v. *The County*, 16 Wall., 6.
Myer v. *Muscatine*, 1 Wall., 385.

In *Coloma* v. *Eaves*, 92 U. S., 484, the Court say:

"The recital (by the board of officials) made in the bonds issued by them and held by a *bona fide* purchaser, *is conclusive of the fact and binding on the municipality; for the recital itself is a decision of the fact by the appointed tribunal.*"

And again, page 491, the Court say:

"*That the correctness of this doctrine, we think, has been so firmly seated in reason and authority that it cannot be shaken.*"

Knox v. *Aspinwall*, 21 How., 544.
Van Horstrop v. *Madison City*, 1 Wall, 291.
Mercer County v. *Hackett*, 1 Id., 83.
St. Joseph v. *Rogers*, 16 Id., 644.
Venice Town, v. *Murdock*, 92 U. S., 494.
Dallas v. *McKenzie*, 110 Id., 686.
Grand Chute v. *Winegar*, 15 Wall., 371.

"The Court is not permitted to controvert the judgment of the officer charged with the duty of deciding the questions preliminary to the issue of the bonds. His determination is conclusive until reversed in a direct proceeding by the Appellate Court."

Third National Bank of Syracuse v. *Town of Seneca Falls*, 15 Fed. Rep , 735.

Besides the issuance of the bond and recitals as evidence of the decisions of the County Court of Platte County, as to the bonds, we have their decisions in the records of the County, in evidence, and what they decided at the meeting of February 14, 1871, in the following language: See p. 13

"*Whereas, the Court, on the 10th day of July, A. D. 1869, made an order submitting to a vote of the taxable inhabitants of the strip of*

territory in Platte County, hereinafter mentioned and described, a proposition to subscribe for Fifty Thousand Dollars of the capital stock of the Chicago and Southwestern Railway Company; and whereas, at the election held at Camden Point, in said strip, on the 17th day of August, 1869, by virtue of the provisions of an Act to incorporate the Platte City and Fort Des Moines Railroad Company, approved January 4, 1860, the taxable inhabitants aforesaid, voted in favor of such subscription; and whereas, by an Act of the General Assembly of the State of Missouri, entitled 'An act to amend an act entitled an act to facilitate the construction of railroads in the State of Missouri,' approved March 23, 1868, amended March 24, 1870, *the Court was authorized to issue bonds in payment of such subscription; and whereas, in consideration of this order and vote recited above, said railway company has located, constructed and completed its railway depot therefor, within one mile of the Town of Camden Point; therefore, it is ordered by the Court that fifty bonds of the County, each for One Thousand Dollars, be issued and delivered to said railway company, dated October 4, 1870, which bonds shall be executed by the Presiding Justice and the Clerk hereof, attested by the seal of the Court, due twenty years after date, at the American Exchange National Bank, in the City of New York, with forty semi-annual coupons, each for Fifty Dollars, for interest accruing thereon, executed and payable in like manner as said bonds.*

"It is further expressly ordered and provided, that the subscription bonds and coupons aforesaid, *are made and executed for*, and on behalf of, the taxable inhabitants of all that part of the municipal *Township of Greene, in said County, lying east of the Range line, between thirty-four and thirty-five, and the said bonds and coupons shall be paid by the taxable inhabitants exclusively, as provided by law*, and none thereof shall ever be a charge on the County of Platte; and it is further ordered that the Chicago and Southwestern Railway Com-

pany shall pay all the expenses necessary for the transferral of the funds to New York, to pay the interest and bonds aforesaid; and the said Company shall pay the expenses of the execution of the bonds, and all costs attending the same." (See Records.) p. 14

These records and orders, and statements of the County Court, could hardly have been more complete or explicit, or more in accord with the terms of the law, had they been expressly prepared to meet the doctrine laid down in the decisions of the United States Supreme Court, last above cited on the subject.

They are also equally explicit in reference to the levy and collection of taxes, and the payment of interest on these bonds. (See Records.) pp - 15-16-17-

The bonds themselves recite that they are issued IN PURSUANCE OF AN ELECTION HELD by the taxable inhabitants at Camden Point, on the 17th day of August, 1869, importing a full compliance with all demands of the law, and for the payment of which, and the interest thereof, the County Court of said County shall, from time to time, levy and cause to be collected, in the same manner as the County tax, a special tax, which shall be levied on the real estate lying within the district voting at said election. (See Records; Copy of Bonds.) p - 58

The petition for the election states the acts of the Legislature under which the vote was taken, the portion of the Township of Greene that was to vote to be taxed, and the conditions imposed upon this Railroad Company. (See Records.) pp - 8-9-

These Records fully exhibit the Legislative authority for the vote for subscription, and its careful and literal compliance in the execution of the bonds, and the collection of the taxes for the interest on these bonds, and the payment of the same for a time, and

fully and completely establish the liability of the defendant for their payment.

The recitals on the bonds, that they were "ISSUED IN PURSUANCE OF AN ELECTION HELD," ETC., AND THE ABOVE RECITALS OF THE COUNTY COURT IMPORT A COMPLIANCE WITH ALL THE PROVISIONS OF THE ACTS OF THE ASSEMBLY UNDER WHICH THEY WERE ISSUED.

The recitals on the bonds, that they were issued IN PURSUANCE OF THOSE STATUTES, IS CONCLUSIVE UPON *the township in a suit brought by a bona fide holder, to enforce the payment of them.*

In the *County of Clay* v. *Society for Savings*, 104 U. S., 586, the Court say:

"The ultimate decision of the question whether such a vote had been cast was, therefore, left with the judges of the County Court. The recitals on the bonds, that they were issued PURSUANT TO THE ORDERS OF THE BOARD, the successor of the County Court, as authorized by virtue of the laws of Illinois, is equivalent to a declaration by the Board, upon the face of the bond, that the election had been held, and had resulted so as to authorize the lawful issuing of the bonds. When the bonds are in the hands of a *bona fide* holder, the recital is conclusive and binding upon the municipality."

Under the pleadings, as they stand in this case, the plaintiff is a *bona fide* holder of his bonds and coupons.

County of Moultrie v. Savings Bank, 92 U. S. 631.
School District v. Stone, 106 U. S. 183.
Bonham v. Needles, 103 U. S. 648.
Wade v. Walnut, 103 Id., 695.
Town of Coloma v. Eaves, 92 Id., 484.
Pana v. Bowler, 107 Id., 539.
Commissioners v. January, 94 Id., 202.

We think we have clearly shown that there was ample authority of law for the vote for subscription, and the issue of these bonds in payment therefor, and that the bonds were legally issued in every respect, in accordance with the requirements of the statute; and that by every principle of justice, equity, and law, they are valid obligations of the defendant, and ought to be paid.

Counsel cite *Dodge* v. *Platte Co.*, 82 N. Y., 218. But the United States Supreme Court in *Douglass* v. *County of Pike*, 101 U. S., 677, in construing the acts of legislative power under which the vote was taken and the bonds issued, overruled the doctrines enunciated in the *New York case*. And in the *Ogden* v. *Daviess Co. case*, 102 U. S. 640 - in construing this very *Act of March 24, 1870*, which gives the authority for the issue of the bonds in the case at bar, the United State Supreme Court hold *that act constitutional*, and that it AUTHORIZED the issue of bonds by A PORTION of a township.

Moreover, the *New York case* was decided in 1880, and the two last cases cited above in the United States Supreme Court, were decided in 1879 and 1880. If, therefore, the New York case was of any significance its conclusions are clearly overruled by those of the United States Supreme Court.

In the *New York case* the Court say the question presented to them is "*that the vote of the taxable inhabitants of a strip of land is equivalent to a vote of the qualified electors of a township.*

The United States Supreme Court have decided this question in *Wade* v. *Walnut*, 103 U. S., 683, where they say "the word '*inhabitants*,' where it occurs in the first section of the act, means '*legal voters*.'"

Nor do we claim that the voters of "*a strip*" of land shall be equivalent to, or bind the qualified voters of a *township*. We claim

that "the *taxable inhabitants*," or voters of *this strip*, or *portion* of Greene Township, voting at Camden Point, Aug. 17, 1869, *were qualified by law* to vote this subscription, and *did legally so vote*, and thus *bound themselves* to pay these bonds whose issue was authorized by the act of March 24, 1870, and that they did not bind or assume to bind the voters of the remainder of even Greene Township, or any other township.

That Court say that the County Court of Platte County nullified the vote of Aug. 17, 1869, and that bonds could not be issued on that vote. It is true that Court sustained a motion that said election "be a nullity and of non-effect" at its meeting Oct. 4, 1870, (see Records, book H, page 474,) but that Court had *no power whatever to annull an election legally held* by the taxable inhabitants at Camden Point. It was clearly *ultra vires*. Moreover, the *same court* at its meeting, Feb. 14, 1871, (see Records, book H(page 594,) declares that at that election "*the taxable inhabitants, aforesaid, voted in favor of such subscription.*" Then the *legislature legalizes this election* and authorizes the issue of bonds to pay the subscription voted by the act of March 24, 1870, which act and the vote of Aug. 17, 1869, the County Court cite as their authority for issuing the bonds at their meeting of Feb. 14, 1870.

The County Court cannot at one meeting *nullify* a vote of the people and at another *revive* it and order bonds issued thereon. If such a proceeding were possible we should be still left with the Legislative act of March 24, 1870, *legalizing this very election and authorizing the issue of the bonds*, which would be sufficient in law to validate *their issue*.

Nor can it be objected that *the territory*, whose electors voted at Camden Point, was not a well defined municipality. It was sufficiently described as "*a portion*" of the Township for the election to be held

"according to law," and *for taxes to be levied and collected from its taxable inhabitants for three installments of interest when due.* (See Records.) pp-9-14-16-17-18-

Under the pleadings all averments of the petition are admitted, and it is really only a question of law. In *Pickering* v. *Miss. Valley Nat. Tel. Co.*, 47 Mo., 457, the Court say: "By answering upon the merits, the defendants practically withdrew and abandoned the demurrer, although it may not have been withdrawn in form. A demurrer admitting the facts and an answer denying them are totally inconsistent with each other, and cannot stand together. As the demurrer admitted the facts, when it was overruled the plaintiff *was technically entitled to judgment.*

Again—"A defendant who answers upon the merits after demurrer overruled, thereby practically withdraws the demurrer, and waives all technical objections to the petition."

Township Board of Education 44 v. John G. Hockman, 48 MO., 243.

We therefore ask this Honorable Court to reverse the judgment of the Court below, and grant all necessary and proper orders, that justice may be granted the plaintiff.

GEO. A. SANDERS,

OF SANDERS & BOWERS, *Counsellors for Plaintiff.*

APPENDIX.

COPY OF BONDS AND COUPONS.

Fifty bonds of $1,000 each were issued by the County Court of Platte County, Missouri, with the coupons for interest, at the rate of ten per cent per annum, payable at the American Exchange National Bank, of New York City, on the 1st days of April and October. The bonds are an exact *fac simile* of each other, except as to numbers, and are nnmbered from one to fifty:

The following is a copy of bond No. 35:

"UNITED STATES OF AMERICA.

$1,000. State of Missouri, (Vignette) County of Platte. $1,000.

PLATTE COUNTY TWENTY YEAR BOND.

No. 35.

"*Know all men by these presents:* That the County of Platte, in the State of Missouri, acknowledges itself to owe and be indebted to, and promises to pay the bearer the sum of One Thousand Dollars, on the first day of October, One Thousand Eight Hundred and Ninety, for value received, at the American Exchange National Bank, in the City and State of New York, with interest thereon from the 4th day of October, A. D. 1870, at the rate of ten per cent per annum, until paid, which interest shall be due and payable semi-annually, on the

first day of April and October, in each year, on presentation of the proper interest coupon, as annexed hereto, at the American Exchange National Bank.

"This is one of fifty bonds of like date, and amount, and effect, numbered from one to fifty, both numbers inclusive, issued in pursuance of an election held by the taxable inhabitants of Camden Point, on the 17th day of August, A. D. 1869, and for the payment of which, and the interest thereof, the County Court of said County shall, from time to time, levy and cause to be collected, in the same manner as County tax, a special tax, which shall be levied on the real estate lying within the district so voting at said election.

"In testimony whereof, the said County of Platte, by order of its County Court, has caused these presents to be executed, by the signature of the Presiding Justice of said Court, attested by the Clerk thereof, with the seal of the County affixed, at his office in Platte City, Platte County, Missouri, this 4th day of October, A. D. 1870. T. H. TALBOTT,

T. W. PARK, Clerk. Presiding Justice.

[SEAL] (Vignette.)"

The coupons attached are an exact *fac simile* of each other, save as to the number of the bonds from which they are taken, their serial numbers, and date when due. A copy of coupon from Bond No. 35, Series 38, and due October 1, 1889, is in the words and figures following, to-wit:

"PLATTE CITY, MO., OCTOBER 4TH, 1870."

The County of Platte, in the State of Missouri. $50.

Promises to pay to bearer FIFTY DOLLARS, for value received, at the American Exchange National Bank, in the City of New York,

on the 1st day of October, A. D. 1889, being semi-annual interest on Bond No. 35, issued to the Chicago and Southwestern Railway Company." T. H. TALBOTT, Presiding Justice.

T. W. PARK, Clerk.

(ENDORSED ON EACH BOND.)

"No. 35. STATE OF MISSOURI." $1,000.

PLATTE COUNTY TWENTY YEAR

BOND.

Principle payable, October 1st, 1890.

"Interest payable 1st April and October, at the American Exchange National Bank, in the City and State of New York."

For convenience of the Court we quote the laws and sections on which we rely, for the authority of the Legislature for the issuance of the bonds, coupons from which are in controversy.

ACT OF 4TH JANUARY, 1860.

The General Assembly of the State of Missouri, on the 4th day of January, 1860, passed an act to incorporate the Platte City and Des Moines Railroad Company, which was changed in name, by statutory enactment, to the Chicago and Southwestern Railway Company.

Section 7, of that Charter Act, is as follows:

"Section 7. Upon the presentation of a petition of the President and Directors of said Company, to the County Court of any County through which said road may be located, praying that a vote may be taken in any strip of country through which it may pass, not exceeding ten miles on either side of said road, that the inhabitants thereof are desirous of taking stock in said road, and of voting upon

themselves a tax for the payment of the same, it shall be the duty of said County Court to order an election therein, and shall prescribe the time, place and manner of holding said election, and if a majority of the taxable inhabitants shall determine in favor of the tax, it shall be the duty of said Court to levy and collect a special tax, which shall be kept separate from all other funds, and appropriated to no other purpose, and, as fast as collected, shall cause the same to be paid to the Treasurer of said Company."

CONSTITUTION OF MISSOURI, 1865.

The Constitution of the State of Missouri, in force when the bonds and coupons in the case at bar were voted and issued, went into effect July 4, 1865, and Section 14, Article 11, reads as follows:

"The General Assembly shall not authorize any *city*, *county* or *town*, to become a stockholder in or loan its credit to any Company, Association or Corporation, unless two-thirds of the qualified voters of such County, City or Town, at a regular or special election to be held therein, shall assent thereto."

ACT OF MARCH 24, 1868.

The General Assembly of the State of Missouri, passed, March 23, 1868, an act to facilitate the construction of railroads, in which *municipal townships* in any County of Missouri were authorized to subscribe, through the County Court of the County, to the stock of the Railroad Companies, with the assent of two-thirds of the qualified voters of the township, and to pay their subscription with bonds, in the name of the County, payable out of a special tax, to be levied on the real estate of the township.

Seetion 1 of the Act of March 24, 1868, reads as follows:

"That the various Counties of this State be, and they are hereby authorized to fund any and all debts they may owe, and for that